CALIFORNIA LEGISLATIVE SUMMARY

The California Legislature is currently on its annual summer recess until August 12th. However, before commencing this recess, it first enacted a new law (SB 188) amending the Fair Employment and Housing Act (FEHA) to preclude workplace discrimination based on hairstyles and other traits historically associated with race. Governor Gavin Newsom has already signed this law, which will take effect January 1, 2020.

Before leaving Sacramento, the legislature also advanced a number of other employment bills, including bills to:

- Delay the new harassment training deadlines for smaller employers and non-supervisory employees from January 1, 2020 to January 1, 2021 and clarify that employees who received sexual harassment training in 2018 need not be re-trained in 2019 (SB 778);
- Prohibit mandatory pre-employment arbitration agreements for FEHA and/or Labor Code violations (AB 51);
- Impose joint liability for harassment upon client employers and labor contractors (AB 170);
- Amend the Labor Code to preclude discrimination or retaliation against sexual harassment victims and their family members (AB 171);
- Extend the statute of limitations for FEHA claims from one to three years (AB 9) and for Labor Code claims from six months to two years (AB 403);
- Require employers to provide up to an additional thirty days of unpaid leave for organ donations (AB 1223);
- Further expand workplace lactation accommodation requirements (SB 142);
- Amend the California Consumer Privacy Act to temporarily exclude information gathered by employers in the employment context (AB 25);
- Prohibit so-called "no rehire" provisions in employment-related settlement agreements (AB 749);
- Codify the California Supreme Court's *Dynamex* ruling regarding independent contractors while identifying various exemptions (AB 5); and
- Require larger employers to submit annual "pay data reports" (SB 171).

However, a bill that would have amended FEHA to modernize and expand California's veterans hiring preference (AB 160) stalled despite bi-partisan support, but may be revisited next year.

The Legislature will reconvene on August 12th, and will need to move quickly to pass bills before the September 13th deadline to send bills to Governor Newsom.

Below is a discussion of the new laws already enacted followed by an overview of the currently pending employment bills grouped largely by subject matter.

NEW LAWS

FEHA Amendments for "Protective Hairstyles" (SB 188)

Responding to concerns that many existing dress and grooming codes have a disparate impact on African Americans, this new law amends the definition of "race" under FEHA to include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles." Protective hairstyles, in turn, is defined as "including, but is not limited to, such hairstyles as braids, locks, and twists."

According to the bill's author, this provision invalidates dress/grooming provisions that either explicitly preclude such hairstyles, or that while facially neutral are enforced in a manner that precludes such hairstyles.

New York City recently adopted similar guidelines to protect the rights of employees to maintain natural hair or hairstyles closely associated with their racial, ethnic or cultural identities, including the same specific protections for locks, twists and braids. https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf

Governor Newsom has signed this bill into law, and it will take effect January 1, 2020.

PENDING BILLS

Harassment/Discrimination/Retaliation

Delay of and Clarification for New Sexual Harassment Training Deadlines (SB 778)

In 2018, California unanimously enacted SB 1343 which extended so-called AB 1825 harassment training in two material respects: (1) it required employers with five or more employees (rather than 50 employees) to provide this training; and (2) it required employers to train both supervisors and non-supervisory employees. However, as the contemplated January 1, 2020 compliance date approaches, several ambiguities have arisen including whether employees trained in 2018 need to be retrained in 2019 and when training must be provided to non-supervisory employees after their hire.

SB 778 would make three helpful clarifications to California's new harassment training requirements contained in Government Code section 12950.1. First, it would extend the deadline for most employers to comply with the new harassment training requirements from January 1, 2020 to January 1, 2021. This extension would provide additional time for those larger employers who previously trained their supervisors to train their non-supervisory employees, and for smaller employers to train both their supervisory and non-supervisory employees. As a practical matter, it would also provide additional time after the DFEH training materials are published in late 2019 for employers to determine whether to use them or to develop their own training modules.

Second, the new January 1, 2021 deadline removes the prior concern that supervisors trained in 2018 would need to be retrained in 2019 to meet the 2020 deadline. It also specifically provides that employers who provide legally-sufficient training in 2019 – whether to comply with the previously announced January 1, 2020 deadline or because they simply still wish to do so earlier – will not be required to provide further refresher training and education again until two years thereafter. Further, it specifies that moving forward, employers must provide this sexual harassment training and education to each California employee once every two years.

Third, it specifies that non-supervisory employees must be trained within six months of hire, thus harmonizing it with a similar rule requiring supervisors be trained within six months of assuming a supervisory position.

Please note, while SB 778 would extend the initial training compliance deadline in Government Code section 12950.1(a) applicable to most employers, it would not affect the training requirements contained in subsection (h) applicable to seasonal, temporary or other employees hired to work for less than six months, or to migrant and seasonal agricultural workers. Thus, while the employees covered by subsection (a) (which is most employees) would now be trained "by January 1, 2021" those employers subject to these more industry specific subsections must still comply with their particular training requirements beginning "January 1, 2020." As a practical matter, while almost all employees in California will need to be trained in 2020 (unless trained in 2019) to meet the new January 1, 2021 deadline, employers subject to these more specific industry-specific requirements may need to provide their training earlier in 2020 to meet the specific time frames applicable to them (e.g., within the first 30 days after hire or within 100 hours worked for seasonal, temporary or other employees hired to work for less than six months).

This clarifying bill is proposed by the Senate's Committee on Labor, Public Employment and Retirement and appears very likely to be quickly enacted and would take effect immediately.

Status: Unanimously passed the Senate, and has unanimously passed various Assembly committees and a full floor vote is expected shortly. This bill appears unopposed.

Extended Statute of Limitations for FEHA Complaints Re-Introduced (AB 9)

Government Code section 12960 presently requires employees to file an administrative charge with the DFEH within one year from the date an unlawful employment practice occurs. This bill would extend this deadline from one year to three years, but retain a one-year limitations period for filing Unruh Act-related claims against businesses. It would also make conforming changes to the provision allowing employees an additional period up to 90 days if they first obtain knowledge of the facts of the alleged unlawful practice after the limitations period had expired. This extended limitations period would not revive already lapsed claims, and would define "filing a complaint" as filing an intake form with the DFEH, with the operative date of a

subsequently-filed verified complaint relating back to the filing of the intake form.

It would also amend section 12965 to clarify that the DFEH's one-year period to investigate an employee's complaint and decide whether to bring a civil action starts from the filing of a verified complaint, rather than simply an intake form.

A nearly identical bill (AB 1870) passed the Legislature but was vetoed by then-Governor Jerry Brown.

Status: Passed the Assembly largely along party lines, and is pending in the Senate Appropriations Committee..

Joint Responsibility for Harassment of Labor Contractor Employees (AB 170)

Labor Code section 2810.3 presently requires client employers and labor contractors to share civil liability for workers supplied by that contractor for certain violations (e.g., failure to pay wages or secure workers' compensation coverage) regardless of which exercises daily control over the contractor employee. This bill would require such client employers and labor contractors to also share both legal responsibility and civil liability for "harassment" (as defined in FEHA) of any workers supplied by a labor contractor.

The bill's author states it is intended to assist subcontracted employees, who may not even be aware they are working for someone other than their employer due to the subcontracting agency, pursue legal redress for harassment. It is also intended to address perceived ambiguities as to liability for harassment in the staffing context, including whether a client employer can be responsible for harassment by a contracted worker, and as to which entity would have responsibility for addressing any harassment.

Accordingly, client employers and labor contractors would share responsibility and liability for harassment for all workers supplied by the labor contractor, regardless of whether the harasser was employed by the client employer or the labor contractor. It would also specify that both entities may have responsibility to address the harassment -- depending on the facts, who was in the best position to learn of the conduct, or who did first learn of it – and impose civil liability if they fail to take prompt and effective remedial measures once they knew or should have known of the harassment. Although the client employer would not automatically be strictly liable for all workplace harassment involving labor contractor employees, the author states this potential sharing of liability is intended to encourage client employers to do everything possible to prevent workplace harassment, including for labor contractor employees.

Under proposed new Government Code section 12940.2, "client employer" shall mean a "private" employer regardless of its form that obtains workers to perform labor within the usual course of business from a labor contractor. However, it would not include business entities with fewer than 25 workers, including those provided by a labor contractor. It would

also not include a business entity (regardless of size) with five or fewer workers supplied by a labor contractor.

"Labor contractor" would mean any individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business. However, "labor contractor" would not include community nonprofit organizations, labor organizations or apprenticeship programs, motion picture payroll services (as defined) or a third party who is a party to an "employee leasing arrangement" (as defined).

Relatively similar changes were proposed in AB 3081, along with many other unrelated provisions, which then-Governor Jerry Brown vetoed in 2018.

Status: Passed the Assembly largely along a party-line vote, and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

Municipality-Level Anti-Discrimination Ordinances (SB 218)

Government Code section 12993(c) presently states the FEHA is intended to occupy the entire field of regulation regarding discrimination in employment and housing, meaning municipalities are preempted from enacting their own ordinances on these subjects. This bill would delete this preemption provision as to employment, thus allowing municipalities to both enforce the statewide FEHA provisions and enact their own employment antidiscrimination laws. The municipalities would also be permitted to establish their own administrative agencies and penalties for enforcement purposes. They would also be able to increase employee protections above the FEHA, including prohibiting conduct not presently prohibited, but they could not decrease FEHA's protections or conflict with the FEHA such as by requiring conduct that the FEHA prohibits.

For enforcement purposes, the municipality could create its own agency and authorize remedies beyond those available under the FEHA. The municipality and the DFEH would be able to establish dual filing relationships, meaning a charge filed with one is automatically filed with the other to preclude the employee from having to file in multiple places. Regarding potential federal claims, the local agency would have the ability to either enter into a dual-filing relationship with the EEOC, or to notify the employee about their federal rights and deadlines in case the employee would need to file separately with the EEOC. However, an employee would not need to first file with the municipality before filing with the DFEH/EEOC, and a charge first filed with the DFEH or EEOC would extinguish the ability to subsequently file with the municipality.

This bill appears to be based upon recommendations made by a DFEH Advisory Board after a similar bill (SB 491) was vetoed by then-Governor Jerry Brown.

Status: Passed the Senate, and has passed the Assembly and Employment and Judiciary

Committees and is pending in the Assembly Appropriations Committee. This bill appears heavily opposed and a number of concerns have been expressed about its need for further clarifications moving forward.

Labor Code Protections for Sexual Harassmsent and Presumption of Post-Harassment Complaint Retaliation (AB 171)

Labor Code section 230 presently precludes all employers from discriminating or retaliating against victims of domestic violence, sexual assault or stalking, if the victim provides notice to the employer of the status or the employer has actual notice of this status.

This bill would amend this section to similarly preclude discrimination or retaliation against victims of "sexual harassment" (as defined by the Fair Employment and Housing Act in Government Code section 12940(j).) In this regard, while the FEHA presently precludes retaliation against someone who has made a sexual harassment complaint, this bill would enact and extend Labor Code retaliation protections to someone who is a sexual harassment victim (but may not have made a complaint) if the employer knew about the harassment.

Commencing July 1, 2020, it would also create a rebuttable presumption of unlawful retaliation if, within 90 days of the employee providing notice of or the employer learning of their status as a victim of sexual assault, domestic violence, sexual assault or sexual harassment, the employer discharges, threatens to discharge, demotes, suspends or takes any other adverse action against the employee. An employer would have the ability to rebut this presumption by evidence the employer had a non-retaliatory business reason for the adverse employment action. However, in those circumstances where an employer has authorized certain individuals or entities to receive a report confidentially, that individual or entity's knowledge will not be imputed to the employer for purposes of the 90-day presumption of retaliation.

"Employer" would be broadly defined to mean any person employing another under any appointment or contract of hire, and to include the state, political subdivisions and municipalities.

These changes were proposed as part of AB 3081 which then-Governor Jerry Brown vetoed in 2018.

Status: Passed the Assembly with some bi-partisan support and has passed the Senate Judiciary and Labor Committees and is pending in the Senate Appropriations Committee.

Private Civil Action for Violations of Labor Code Section 230 (AB 1478)

This bill would also amend Labor Code sections 230 and 230.1 relating to time off from work due to unexpected events, and expand an employee's ability to bring a private civil action for violations of this provision without having to exhaust administrative remedies. Specifically, it would make clear that an employee may directly file a private action without first involving the

Labor Commissioner for any violations regarding an employee's (1) ability to take time off for jury duty; (2) status as a crime victim; (3) ability to take time off to seek legal aid because of a sexual assault, domestic violence or stalking; (4) status as a victim of sexual assault, domestic violence, or stalking; or (5) request for reasonable accommodation related to sexual assault, domestic violence or stalking.

Continuing a recent trend, these amendments would authorize only a "prevailing employee" to recover their attorneys' fees and costs. The court would also be able to award "any other relief" that the court deems would effectuate the purpose of these protections, including reinstatement, front and back pay, and emotional distress.

Status: Narrowly passed the Assembly, and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

Harassment Training for Janitorial Service Workers (AB 547)

Known as the Janitor Survivor Empowerment Act, this bill would enact specific harassment training rules related to the janitorial service industry, including requiring peers to provide direct training on harassment prevention for janitors. It would also require employers, upon request, to provide a copy of all training materials used during the training and require employers to use a qualified organization from the list maintained by the Department of Industrial Relations.

Employers would need to maintain records for three years identifying the names and addresses of all employees engaged in rendering janitorial services for the employer.

"Employer" would mean any person employing at least one covered worker or otherwise engaged by contract, subcontract or franchise agreement for providing janitorial services by one or more covered workers.

A similar bill (AB 2079) passed the Legislature in 2018 but was vetoed by then-Governor Brown.

Status: Passed the Assembly, and has passed the Senate Committee and is pending on the Senate floor.

Harassment Poster Requirement for Educational Institutions (AB 543)

While the Education Code presently requires educational institutions to display its sexual harassment policy in a prominent location, this bill would expand these notice protections to include not only employees, but also students. Accordingly, it would require each educational institution to create and conspicuously display a poster notifying pupils of the institution's written policy on sexual harassment. As with many other poster requirements, this bill specifies many of the formatting requirements for this poster but otherwise directs that it contain "age appropriate" and "culturally relevant" information.

Status: Unanimously passed the Assembly and is pending in the Senate.

Targeting "Implicit Bias" in Certain Industries (AB 241-243)

AB 242 would develop new implicit bias training for members of the judicial branch. Specifically, all court staff who interact with the public would be required take two hours of implicit bias training every two years. The Judicial Council will be tasked with developing this training. The California State Bar would also be tasked with adopting regulations regarding mandatory MCLE training for attorneys to include implicit bias training for each MCLE compliance period beginning January 31, 2023 and thereafter.

AB 243 would require that police officers take refresher implicit bias training every two years rather than every five years.

AB 241 would require the Board of Registered Nursing and the Physician Assistant Board to develop by January 1, 2022 regulations regarding implicit bias in treatment, and require associations (i.e., education providers, etc.) to comply with these provisions.

Status: All three bills have passed the Assembly with bi-partisan support and are pending in the Senate. Where they have passed key committee votes and are pending in the Senate Appropriations Committee.

Arbitration Agreements

Proposed Ban on Mandatory Arbitration for FEHA and Labor Code Claims (AB 51)

This bill responds to concerns that employers conceal sexual harassment through mandatory arbitration agreements and non-disparagement provisions. Accordingly, new Labor Code section 432.6 would preclude employers from requiring applicants, current employees or independent contractors to agree as a condition of employment, continued employment, or the receipt of any employment-related benefit to waive any right, forum, or procedure related to any violations of the Fair Employment and Housing Act (FEHA) and the Labor Code, including the right to file a claim with a state or law enforcement agency. It would also preclude employers from threatening, retaliating, or discriminating against any employee or applicant (including terminating their application for employment) who refuses to consent to the waivers prohibited under this section. It also specifies that any agreement requiring an employee to opt out of a waiver or to take any affirmative action to preserve their rights will be considered a condition of employment.

However, it would not apply to post-dispute settlement agreements or negotiated severance agreements.

Although AB 51 does not mention arbitration specifically, the bill is clearly intended to essentially prohibit mandatory arbitration for not only FEHA claims, but also Labor Code claims.

To escape a likely forthcoming preemption challenge, the bill's author states this bill does not preclude arbitration agreements for FEHA and Labor Code claims, but simply precludes employers from requiring them as a condition of employment, or retaliating against employees who choose not to agree to arbitration.

This prohibition would apply to any contracts for employment entered into, modified or extended on or after January 1, 2020. Further, prevailing plaintiffs who enforce their rights under this section would be entitled to recover their reasonable attorney's fees and injunctive relief (e.g., reinstatement, nullification of the improper contract provisions, etc.)

Lastly, new Government Code section 12953 would specify that it shall be an unlawful employment practice, thus implicating the FEHA, for an employer to violate proposed new Labor Code section 432.6.

An identical bill (AB 3080) narrowly passed the Legislature but was vetoed by then-Governor Jerry Brown. New Jersey recently joined the state of Washington in enacting similar state-wide bans on arbitration agreements for most employment disputes.

Status: Passed the Assembly on a party-line vote, and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

New Penalties for an Employer's Breach of Arbitration Agreement (SB 707)

This bill attempts to address concerns that after forcing an employee to compel arbitration employers are strategically failing to pay arbitration-related fees, thus stalling the proceedings. Accordingly, this bill would implement new penalties if an employer failed to pay within 30 days of their due date the fees to initiate or to maintain arbitration proceedings for employment or consumer claims.

New Code of Civil Procedure sections 1281.97 and 1281.98 would deem such an employer in material breach of the arbitration agreement and in default of the arbitration, thus waiving their right to compel or proceed with arbitration. The employee would then have the option to withdraw the claim from arbitration and proceed in an appropriate court, or continue the arbitration but with the employer paying the employee's attorneys' fees involved with the arbitration. If the employee elects to proceed with court action, the statute of limitations would be deemed tolled during the prior pendency of the arbitration for any claims brought in arbitration or that relate back to any claim brought in arbitration. The court would also be required to order monetary sanctions against an employer deemed in breach, and would also have the authority to award additional sanctions, including limits on discovery, evidentiary and potentially terminating sanctions.

Status: Passed the Senate with some bi-partisan support, and has passed the Assembly Judiciary Committee.

Leaves of Absence/Time Off-Related Laws

Increased Leave Time for Organ Donation Purposes (AB 1223)

Since 2010, Labor Code section 1510 has required private and public employers to allow employees to take a paid leave of absence of up to 30 business days within a one-year period for the purpose of donating an organ to another person, and up to five business days for bone marrow donations. This bill would require private and public employers to grant an employee an additional unpaid leave of absence of up to 30 business days within a one-year period for organ donations. As with the prior leaves for organ or bone marrow donation purposes, the one-year period for this extended unpaid leave for organ donation purposes would be measured from the date the employee's leave begins and shall consist of 12 consecutive months.

State employers would be required to grant an employee who has exhausted all sick leave an additional unpaid leave of absence up to 30 business days in a one-year period for organ donation purposes.

To further encourage organ donations, this bill would prohibit certain insurance policies issued or renewed after January 1, 2020 from denying coverage, limiting the amounts or types of coverage, or charging different rates because the insured is a living organ donor.

Status: Unanimously passed the Assembly, and has unanimously passed the Senate Labor and Insurance and Appropriations Committees and is pending on the Senate floor. This bill appears unopposed.

Increased Paid Family Leave Benefits (AB 196 and AB 406)

California's "paid family leave" is a state-sponsored insurance program within the state disability insurance program that provides wage replacement benefits for up to six weeks within a twelve-month period for certain purposes (e.g., time off to care for seriously ill family member or to bond with minor child). Currently the program provides benefits based upon weekly benefits available pursuant to unemployment compensation disability law, and essentially allows up to 70% of income for low income earners and 60% for middle and high income earners up to a maximum weekly benefit of $1,216.

AB 196 would revise the formula for determining benefits available for the family temporary disability insurance program for periods of disability commencing after January 1, 2020. This change would redefine the weekly benefit amount to be equal to 100% of the wages paid to an individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest, divided by 13, but not exceeding the maximum workers' compensation temporary disability indemnity weekly benefit established by the Department of Industrial Relations.

AB 406 would require the Employment Development Department, beginning January 1, 2025, to distribute the application for "Paid Family Leave" in all non-English languages spoken by a substantial number of non-English speaking applicants. This bill seeks to address an inconsistency in that many brochures and notices for Paid Family Leave are in various languages but the application itself is presently only in English.

Status: AB 196 overwhelmingly passed the Assembly and is pending in the Senate. AB 406 overwhelmingly passed the Assembly, and has unanimously passed the Senate Labor Committee and is pending in the Appropriations Committee. AB 406 appears unopposed and likely to be enacted.

Conforming CFRA Change for "Flight Crew" Employees (AB 1748)

This bill would amend the CFRA to conform to the FMLA service requirement for airline flight employees. Accordingly, under new subsection (u) to Government Code section 12945.2, flight deck or cabin crew members of an air carrier will be eligible for CFRA leave if they have 12 months of service, they have worked or been paid for 60% of the applicable monthly guarantee or equivalent annualized over the preceding 12-month period, and the employee has worked or been paid for a minimum of 504 hours during the preceding 12 months. The DFEH would also be authorized to adopt regulations to calculate leave available to flight crew employees under these provisions.

Status: Unanimously passed the Assembly, and has unanimously passed the Senate Labor Committee and is pending on the Senate floor. This bill appears unopposed.

Paid Maternity Leave for School and Community College Employees (AB 500)

This bill would require the governing body for school districts, charter schools and community colleges to provide at least six weeks' paid leave for a certificated employee or an academic employee due to pregnancy, miscarriage, childbirth and recovery from those conditions. This leave may begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth or related condition.

Status: Overwhelmingly passed the Assembly, and has unanimously passed the Senate Education Committee and is pending in the Senate Appropriations Committee.

Pay Equity

Annual Pay Data Reports (SB 171)

Evincing the ongoing feud between California and the federal government, this bill would essentially enact the proposed Obama administration regulations for revised EEO-1 reporting that the Trump Administration stopped in 2017. The bill's author states it is intended to force large California employers to undertake self-audits of their pay structures and then report these

results to enable the state to monitor the overall progress toward achieving pay equity.

Accordingly, beginning March 31, 2021, and annually thereafter by this same deadline, private employers with 100 or more employees that are required to submit an annual EEO-1 will be required to submit "pay data reports" for the prior calendar year (i.e., the "Reporting Year") to the Department of Fair Employment and Housing (DFEH), who can also then share this report with the Division of Labor Standards Enforcement (DLSE) upon request. The pay data report would need to include very specific information enumerated in proposed new Government Code section 12999, including the number of employees by race, ethnicity, and sex in the following job categories: (a) executive or senior level officials and managers; (b) first or mid-level officials and managers; (c) professionals; (d) technicians; (e) sales workers; (f) administrative support workers; (g) craft workers; (h) operatives; (i) laborers and helpers; and (j) service workers.

Employers would also need to identify the number of employees, identified by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the United States Bureau of Labor Statistics in the Occupational Employment Statistics survey. For this particular purpose, the employer shall calculate the employee's earnings as shown on the IRS Form W-2 for each "snapshot" (i.e., during a single pay period of the employer's choice between October 1st and December 31st of the Reporting Year) and for the entire Reporting Year, regardless of whether the employee worked the entire calendar year.

For employers with multiple establishments, the employer shall submit a report for each establishment and a consolidated report that includes all employees.

This bill would permit, but not require, employers to include a section providing any "clarifying remarks" regarding any of the information provided. Employers required to file an EEO-1 report with the EEOC or other federal agency containing the same information may comply with this new reporting requirement by submitting the EEO-1 to the DFEH provided it contains the same or substantially similar data required by this bill.

If the DFEH does not receive the required report, it may seek an order requiring employer compliance and shall be entitled to recover its enforcement costs (i.e., likely attorneys' fees).

The bill would require the department to maintain these pay data reports for at least 10 years. However, it would be unlawful for any DFEH officer or employee to publicize any "individually identifiable information" obtained through these reports prior to the initiation of any Equal Pay Act or FEHA claim. "Individually identifiable information" would be defined as "data submitted pursuant to this section that is associated with a specific person or business."

Similarly, individually identifiable information submitted to the DFEH through these reports would be considered confidential information and not subject to the California Public Records Act. However, the DFEH would be able to develop and publish annually aggregate reports based

on the information provided so long as these aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person.

A very similar bill (SB 1284) passed the Senate but stalled in the Assembly in 2018. At the federal level, a district court recently held the Trump Administration failed to meet the legal requirements to stay the Obama Administration's reporting rules regarding EEO-1 pay data, and appeals are ongoing. Foreseeably, if the Obama Administration's pay data reporting rules are upheld, that may assist with passage of SB 171 to the extent complying with its state-level reporting requirements would arguably involve simply submitting the EEO-1 to the DFEH and the EEOC at the same time. In any event, the bill's author suggests SB 171 is intended to ensure covered California employers provide this information to the DFEH regardless of what transpires at the federal level.

Status: Passed the Senate, and has passed the Assembly Labor and Employment and Judiciary Committees on a party-line vote and is pending in the Assembly Appropriations Committee.

Wage and Hour

Codification of *Dynamex's* "ABC" Test for Independent Contractors (AB 5)

In 2018, the California Supreme Court issued its landmark decision in *Dynamex Operations West, Inc. v. Superior Ct.* (2018) 4 Cal.5th 903 articulating a new legal test (the so-called "ABC Test") for determining whether someone is an independent contractor or an employee. This ruling has dominated the current legislative session, and it appears likely there will be additional legislative developments in future years as employee and employer groups continue to negotiate future changes.

AB 5 would state the Legislature's intent to codify the *Dynamex* decision, thus protecting it from legislative or judicial rollback, and will likely attempt three significant changes. First, new Labor Code section 2750.3 would make clear that *Dynamex's* ABC test for independent contractors applies to all provisions of the Labor Code, the Industrial Welfare Commission's Wage Orders or the Unemployment Insurance Code , unless those provisions discussing an "employee" specifically contain an alternative definition.

Thus, an individual providing labor or services shall be considered an employee absent all of the following "ABC" factors being met: (A) the person is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) the person performs work that is outside the usual course of the hiring entity's business; and (C) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

However, AB 5 would also specifically enumerate various occupations that would not be

governed by *Dynamex* but instead would remain governed by the prior so-called *Borello* test. While these exemptions continue to expand as negotiations continue, these industry-specific exemptions from *Dynamex's* ABC Test presently would include : (1) persons or organizations licensed by the Department of Insurance (as specified); (2) a physician and surgeon licensed by the State of California (as specified); (3) a securities broker-dealer or investment advisor or their agents and representatives registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or State of California (as specified); 4) a direct sale representative as described in Unemployment Insurance Code section 650, so long as the conditions for exclusion from employment under that section are met; (5) real estate licensee's licensed by the State of California (as defined), (6) individuals providing hairstyling or barbering services, esthetician or workers providing natural hair braiding (provided they meet the additional proposed guidelines); and (7) repossession agencies (as defined).

A current negotiation point is a further but broader so-called "business to business" exemption for individuals performing work pursuant to a contract with another business entity to provide services to the contracting entity. It presently appears likely the final version of AB 5 will contain a "business to business" exemption, but the exact criteria the contracting business entity will have to demonstrate to be fully determined. Presently, AB 5 identifies 12 criteria, all of which would need to be established, including that the service provider is free from the control and direction of the contracting business in connection with the performance of the work, there is a written contract, and the service provider is customarily engaged in an independently establishe business of the same nature as that involved in the work performed. Businesses or service providers interested in this particular exemption definitely should monitor further developments for this contemplated exemption.

In addition to those specific occupations, section 2750.3 would also contain a more general exemption for individuals engaged in "professional services" (as defined), and except for professionals in the health care and medical fields, provided nine separate statutorily-enumerated elements are established. These elements would require: (1) the individual maintain a business location (which could be a residence) separate from the hiring entity; (2) for work performed more than six months after AB 5 takes effect, the individual has a business license in addition to any required professional license or permits for them to practice in their profession; (3) the individual has the ability to use their own employees in the completion of the work, where reasonable, and has the authority to hire and fire persons who assist in providing the service; (4) the individual has the ability to engage in other contracts for services other than with the hiring entity; (5) both the individual and hiring entity have the ability to negotiate compensation for the services performed; (6) the individual has the ability to set their own hours (other than the project completion date and reasonable business hours); (7) for services that do not need to be performed at a specific location, the individual can determine whether to perform the contract's services; (8) the individual is customarily engaged in the same type of work performed under the contract with another hiring entity or holds

themselves out to other potential customers as available to perform the same type of work; and (9) the individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

"Professional services" would be defined as services that meet any of the following: (1) require an active license from the State of California and involve the practice of law, dentistry, architecture, engineering, podiatrists, veterinarian, private investigation or accounting; (2) require possession of an advance degree of education that customarily involves a prolonged course of specialized intellectual instruction and study in the field of marketing or human resources from qualifying (and identified) types of education institutions; (3) freelance writers (meeting additional identified criteria) and (4) fine artists, professional grant writers and graphic designers if that person actually sets the hours, locations and rates of pay for work provided.

Lastly, AB 5 would specify *Dynamex* does not apply to construction industry subcontracts that satisfy certain enumerated criteria. Instead, the *Borello* test could continue to govern.

It would also declare these provisions are simply declarative of existing law, rather than a change.

Lastly, it would expand the definition of a crime with respect to employer violations of the law regarding an employee.

Status: AB 5 passed the Assembly with some bi-partisan support and has passed the Senate Labor Committee and is pending in the Senate Appropriations Committee. As noted, it is both heavily supported and opposed, and further amendments are likely.

Expanded Statute of Limitations and Attorneys' Fees Recovery for Labor Code Violations (AB 403)

This bill would amend two Labor Code provisions to make it easier or more enticing for plaintiffs to file retaliation claims. First, it would amend Labor Code section 98.7 to extend from six months to two years the period for a person to file a retaliation complaint with the Labor Commissioner.

Second, it would amend California's whistleblower statute (Labor Code section 1102.5) to allow a judge to award reasonable attorneys' fees to a prevailing plaintiff. Notably, in continuance of a recent trend, this amendment would specifically only identify a plaintiff as being able to recover, presumably to preclude a prevailing defendant to recover even if the claims were frivolous.

Status: Narrowly passed the Assembly despite some bi-partisan opposition and has passed the Senate Judiciary Committee and is pending in the Senate Appropriations Committee. A virtually identical bill (AB 2946) failed passage in the Assembly in 2018.

Expanded Remedies for Pay Day Violations (AB 673)

Labor Code section 210 governs the penalties available if an employer violates the rules regarding "pay days," and currently authorizes statutory penalties of $100 for any initial violation (and $200 for each subsequent violation) for late payment of wages. However, section 210 presently authorizes only the Labor Commissioner to recover this penalty, with a percentage shall being paid to the Labor and Workforce Development Agency.

Responding to concerns that the current remedy of penalties only recoverable by the Labor Commissioner is an insufficient deterrent., this bill would amend section 210 to specify that this penalty may be recovered either by the employee as a statutory penalty pursuant to Labor Code section 98, or by the Labor Commissioner under Labor Code section 98.3. This bill initially proposed allowing an employee a private right of action, but this was deleted by amendment to remove some opposition to the bill.

Alternatively, the employee could also recover the civil penalty through a Private Attorneys General Act action, but they could recover statutory penalties under these provisions and under PAGA for the same violation.

In 2017, the California Legislature enacted Labor Code section 204.11 identifying specific payday rules for barbers and cosmetologists licensed under the Barbering and Cosmetology Act, but did not at that time amend section 210 to identify statutory penalties if an employer violated those industry-specific payday rules. Accordingly, AB 673 would also amend section 210 to fix that omission.

Status: Passed the Assembly on a party-line vote, and has passed the Senate Labor Committee and is pending in the Senate Judiciary Committee.

Wage Payment Rules for "Print Shoot" Employees (SB 671)

This industry-specific bill would create special final wage deadlines for "print shoot employees," defined as an individual hired for a period of limited duration to render services relating to or supporting a print shoot. Modeled upon similar rules for other motion picture industry employees, new Labor Code section 201.6 would require that a print shoot employee would be entitled to receive payment of the wage earned and unpaid at the time of termination by the next regular payday (as defined). The employer may mail these wages to the employee or make them available at a location specified by the employer in the county where the employee was hired or performed labor.

This bill is proposed with an urgency provision, meaning it would take effect immediately.

Status: Unanimously passed the Senate, and has unanimously passed the Assembly Labor and Employment and Appropriations Committees and is pending on the Assembly floor. This bill appears unopposed.

Enforcement Mechanisms for Labor Commissioner Citations Relating to Retaliation Complaints (SB 229)

In 2017, California enacted SB 306 to provide greater protections against retaliation after filing a wage-related claim, including authorizing the Labor Commissioner to issue citations and obtain injunctive relief addressing retaliation concerns during the investigative process. This bill is intended to build upon SB 306, including to align the process for enforcement and for review and appeals with the existing process the Labor Commissioner uses for unpaid wage claims (e.g., contained in Labor Code sections 98, 98.1 and 98.2).

For instance, while SB 306 had authorized the Labor Commissioner to issue citations, it had not expressly created an enforcement mechanism for these citations. Accordingly, SB 229 proposes a process through which the Labor Commissioner may convert an unpaid monetary citation or order into a money judgment. It also sets forth how the Labor Commissioner can convert any non-monetary orders (e.g., reinstatement, etc.) into judicial orders.

It also provides greater detail about how an employer facing a Labor Commissioner order for unlawful retaliation may challenge it in superior court through a petition for a writ of mandate. Notably, while an employer bond for judicial review purposes must include the amounts owed for the underlying violations (e.g., minimum wages, lost wages, overtime compensation, etc.), this bond currently need not include penalties and accrued interest. Concerned this omission left an employee not fully compensated if the superior court affirms the Labor Commissioner's award, this bill would require the appeal bond to also include penalties, interest and any other monetary relief.

Status: Passed the Senate with some bi-partisan support, and has passed the Assembly Labor and Employment and Judiciary Committees and is pending in the Assembly Appropriations Committee. This bill presently appears largely unopposed, perhaps because its enforcement mechanisms are intended to mirror those used for other Labor Commissioner claims.

Recruiting/Onboarding/Background Checks

Prohibition on "No Rehire" Provisions (AB 749)

Continuing the recent trend of legislatively limiting otherwise common settlement agreement provisions, this bill would prohibit any settlement agreement related to an employment dispute from preventing or restricting the "aggrieved person" from obtaining future employment with the employer against whom the claim was filed, or any parent company, subsidiary, division, affiliate, or contractor of the employer. Any such provision in an agreement entered into or after January 1, 2020 shall be deemed void as a matter of law and against public policy.

An "aggrieved employee" would be the person who has filed a claim against the person's employer in court, before an administrative agency, in an alternative dispute resolution forum,

or through the employer's internal complaint process.

However, this bill would not preclude the employer and aggrieved person from making an agreement to end a current employment relationship. The inability to contractually preclude an employee from being rehired would also not require the employer to employ or rehire a person if there is a legitimate non-discriminatory or non-retaliatory reason for terminating the relationship or refusing to rehire the person.

Status: Passed the Assembly on a party-line vote, and has passed the Senate Judiciary Committee.

Preventing "Document Servitude" (AB 589)

To combat so-called "document servitude," this bill would prohibit employers from knowingly destroying, concealing, removing, confiscating or possessing an employee's passport, immigration document, or other actual or purported government identification document, for the purposes of committing trafficking, peonage, slavery, involuntary servitude, or a coercive labor practice. While federal law already prohibits employers from withholding or destroying immigration or identification documents for trafficking purposes, new Labor Code section 1019.3 would create a state law equivalent with new penalties and requirements. Accordingly, it would provide that violations of this prohibition would be a misdemeanor and subject the employer to a $10,000 penalty, in addition to any otherwise available civil or criminal penalty. The Labor Commissioner would also be authorized to issue a citation if it determines a violation has occurred.

Employers would need to post a notice concerning these new protections conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come and go to their places of work, or at the office or nearest agency for payment kept by the employer. This notice shall specify the rights of an employee to maintain custody and control of the employee's own immigration documents, and that the withholding of immigration documents by an employer is a crime. The notice shall also include the following specific language: "If your employer or anyone is controlling your movement, documents, or wages, by using direct or implied threats against you or your family, or both, you have the right to call local or federal authorities, or the National Human Trafficking Hotline at 888-373-7888."

New Labor Code section 1019.5 would also require the DLSE to develop and make available to employers by July 1, 2020 the "Worker's Bill of Rights" containing the following information: (1) the employee's right to retain their immigration and identification documents and the employer's inability to take these documents except for employment eligibility verification purposes; (2) the employee's right to be paid the mandatory minimum wage established by law or agreed to in an employment contract, whichever is higher; (3) the right to live where the employee chooses unless living in employer-provided housing is agreed upon as a lawful

condition of employment and living on the premises is customary or necessary to the duties of employment; (4) the right not to be subject to debt bondage in lieu of being paid wages owed to the employee; and (5) the right to call local or federal authorities, or the national Human Trafficking Hotline at 888-373-7888 if the employer or anyone else is controlling the employee's movement, documents or wages, or using direct or implied threats against the employee or the employee's family. The DLSE will make this notice available in English and the 12 languages most commonly spoken in California by non-English speaking people or people with limited English language proficiency.

The employer would be required to provide copies of the Worker's Bill of Rights to all employees, with the timing of this delivery depending on whether the employee is hired before or after July 1, 2020. For employees hired on or after July 1, 2020, employers must provide this notice prior to verifying an employee's employment authorization. For employees hired before July 1, 2020, employers must provide the document to each employee after the DLSE makes it available.

Employers would be required to provide a copy in the language understood by the employee, and to obtain and retain for three years the employee's signature confirming receipt of this notice, and to provide a copy of the signed document to the employee. The employer may comply with the language requirement either by providing the document in the language understood by the employee or, if the DFEH has not made available a version in the language understood by the employee, by having the document interpreted for the employee in the language the employee understands

A similar bill (AB 2732) passed the Legislature with some bi-partisan support but was vetoed by then-Governor Brown.

Status: Passed the Assembly, and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

California Consumer Privacy Act to Exclude Most "Employees" (AB 25)

Enacted in 2018 and taking effect in 2020, the California Consumer Privacy Act of 2018 (CCPA) will enable "consumers" to request from businesses the personal information the business collects or sells about the consumer, and to request that the business delete any personal information collected about them. Responding to concerns the broadly worded CCPA would apply to information about employees and enable them to request their employer delete information about them (e.g., a sexual harassment charge made against the employee), this bill would provide a one-year partial exclusion form the CCPA for employees acting within their scope as an employee.

Specifically, Civil Code section 1798.145(g)(1) would specify the CCPA does not apply to personal information gathered by an employer in three specific circumstances. First, it would

not apply to personnel information collected by a business in the course of that person acting as a job applicant, employee, owner, director, officer, medical staff member or contractor of that business to the extent this personal information is collected and used by that business solely within the context of that person's role or former role of that business. In a similar manner, it would not apply to personnel information gathered by a business about these individuals that is either "emergency contact information" or that is necessary for the business "to retain to administer benefits" for another natural person, provided this information is collected and used solely for purposes of "having an emergency contact on file" or in the "context of administering those benefits."

However, this exception would not obviate the employer's need to provide notice under section 1798.100 regarding the purpose for gathering this information, and would not preclude an employee from bringing a civil action if any employer violates the CCPA generally. More importantly, because the legislature contemplates further and more long-term amendments of the CCPA to balance these employee and employer interests, this exception will expire on January 1, 2021, essentially giving the Legislature one year to craft further amendments.

Status: Unanimously passed the Assembly and is scheduled to be heard in the Senate Judiciary Committee on August 12, 2019. This bill was originally unopposed but the California plaintiff's attorneys bar has been gathering opposition to this bill.

"Ban the Box" Exception for Criminal Justice Agencies (AB 1372)

Although California has enacted various laws limiting when employers may obtain criminal conviction information and how they may use it, there are also various statutorily-enumerated exceptions for particular industries (e.g., peace officers, etc.). This bill would make a minor amendment to include persons already employed as nonsworn members of a criminal justice agency as an exception to these general rules regarding criminal conviction information, but only for those positions that relate to the collection or analysis of evidence or relate directly to certain activities described in Penal Code section 13101. In short, a criminal justice agency would be able to obtain arrest information about its non-sworn employees that work in law enforcement-like positions, such as criminalists, corrections officers and evidence control employees.

Status: Unanimously passed the Assembly and is pending in the Senate.

Miscellaneous

Lactation Accommodation Requirements (SB 142)

Even though California just amended its lactation accommodation requirements in 2018 (AB 1976) to generally require employers provide a space other than a bathroom and providing guidelines for temporary lactation locations, the legislature has re-introduced a much broader

bill that then-Governor Jerry Brown vetoed last year (SB 937) and which the author states is intended to align California with federal law in several respects.

Amongst other things, while Labor Code section 1030 presently requires employers to provide a reasonable amount of break time to express milk, this bill would specify the employer must provide a reasonable amount of break time each time the employee needs to express milk.

Secondly, while Labor Code section 1031 presently requires the employer "make reasonable efforts" to provide a location "other than a bathroom" (following the adoption of AB 1976), this bill would require the employer to provide such a location (not simply "make reasonable efforts") and specifically enumerate many physical requirements for this location, including adopting some specific requirements in the San Francisco Lactation Accommodation Ordinance, which took effect on January 1, 2018. For instance, it would reiterate that this location shall not be a bathroom and shall be in proximity to the employee's work area, shielded from view, and free from intrusion while the employee is lactating.

It would also require that the lactation room or location comply with all of the following requirements: (1) it be safe, clean, and free of hazardous materials (as defined in Labor Code section 6382) ; (2) contain a surface to place a breast pump and personal items; (3) contain a place to sit; and (4) have access to electricity or alternative devices (e.g., extension cords, charging stations, etc.) to operate an electric or battery-operated breast pump. Employers would also need to provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace. And it would also require that where the lactation room is a multipurpose room, the use for lactation purposes shall take precedence over other uses during the period it is in use for lactation purposes.

For employers in multi-tenant buildings who cannot provide a lactation room within its own workspace, they would be permitted to provide a shared space amongst multiple employers that otherwise complies with these requirements.

Recognizing that some employers may not be able to meet these new requirements due to operational, financial or space limitations, it would allow employers to comply by designating a temporary lactation location. Thus, it would essentially retain the "temporary lactation location" requirements enacted in 2018 (AB 1976) including that the location it is not a bathroom, is in close proximity to the employee's work area, is shielded from view, is free from intrusion while the employee is expressing milk, and otherwise complies with Labor Code section 1031.

While Labor Code section 1031 presently provides an undue hardship exemption to all employers provided they meet the standards identified, federal law limits its undue hardship exemption to employers with 50 or more employees. To align California with federal law, this bill would adopt the federal undue hardship standard. Thus, it would apply only to employers

with fewer than 50 employees and require they demonstrate these lactation location requirements would impose an undue hardship by causing the employer significant expense or operational difficulty when considered in relation to the size, financial resources, nature or structure of the employer's business.

New Labor Code section 1034 would also require employers to develop and implement a lactation accommodation policy including the following specific provisions: (1) notice of the employee's right to lactation accommodation; (2) identification of the process to request accommodation; (3) the employer's obligations to respond to such requests; and (4) the employee's right to file a complaint with the Labor Commissioner. Employers would be required to include this policy within their handbook or sets of policies made available to employees, and to distribute to employees upon hire or when an employee makes an inquiry about or requests parental leave.

Although employers would not need to respond to all lactation accommodation requests in writing, they would be required to respond within five days, and to respond in writing if unable to provide break time or a compliant location for lactation purposes. Employers would also be required to maintain requests for three years from the date of the request and allow the Labor Commissioner to access these records. And employees would be entitled to access these records in the same manner as accessing payroll-related records under Labor Code section 226. An employer who does not maintain adequate records, or does not allow the Labor Commissioner reasonable access to such records, shall be presumed to have violated these accommodation-related requirements absent clear and convincing evidence otherwise.

New Labor Code section 1035 would require the DLSE to develop and publish a model lactation accommodation policy and a model lactation accommodation request form that employers could use. The DLSE would also be required to establish lactation accommodation "best practices" that provide guidance to employers and a list of "optional but recommended amenities," but non-compliance with these "best practices" would not be deemed a violation of this chapter.

This bill would also add retaliation protections for employees who request lactation accommodation, and amended Labor Code section 1033 would specify that the denial of reasonable break time or adequate space to express milk shall be deemed a failure to provide a rest period in accordance with Labor Code section 226.7. While section 1033 presently authorizes a civil penalty of $100 for each violation, this bill would specify that the Labor Commissioner may award this penalty for each day an employee is denied reasonable break time or adequate space to express milk. Employees would also be entitled to file complaints with the Labor Commissioner, in which case they could seek reinstatement, actual damages, and appropriate equitable relief.

Lastly, it would require that new building standards be developed for future construction and

remodels using the San Francisco Lactation in Workplace Ordinance as a starting point.

Status: Passed the Senate, and has unanimously passed the Assembly Labor and Employment Committee and is pending in the Assembly Business and Professions Committee.

Employing Infants in the Entertainment Industry (AB 267)

This bill would amend Labor Code section 1308.8 and extend its current requirements for infants under the age of one month working "on any motion picture set or location" to the "entertainment industry" more broadly. Specifically, it would preclude infants under the age of one month from working in the entertainment industry (as defined) absent certification from a physician or surgeon board certified in pediatrics as to the infant's medical ability to withstand the potential risks of such employment.

Status: Unanimously passed the Assembly, and has unanimously passed the Senate Labor Committee and is pending on the Senate floor. This bill appears unopposed.

Whistleblower Protections Expansion to State or Local Contracting Agency (AB 333)

This bill would add new Labor Code section 1102.51, extending the protections in California's whistleblowing statute (Labor Code section 1102.5) to state and local independent contractors and contracted entities tasked with receiving and investigating complaints from facilities, services and programs operated by state and local government. It would also clarify that these retaliation prohibitions apply to the state or local contracting agency.

Status: Unanimously passed the Assembly and is pending in the Senate.

Union-Related Privilege (AB 418)

This bill would establish a privilege between a union agent and a represented employee to prevent the disclosure in any court or agency proceeding confidential communications made between the two while the agent was acting in the union agent's representative capacity. Under new Evidence Code section 1048, a represented or former represented employee would also have a privilege to prevent another from disclosing such confidential communications. This privilege would not preclude the disclosure of such communications in an action against the union agent or the union, or if the bargaining unit member consented after appropriate disclosures.

Status: Passed the Assembly on a party-line vote and is pending in the Senate.

Unemployment Insurance Benefits during Trade Disputes (AB 1066)

While Unemployment Insurance Code section 1262 presently provides that an employee is ineligible for unemployment insurance benefits if they left work due to a trade dispute, this bill would clarify that this limitation would not apply if the individual was locked out by the

employer. Moreover, while presently employees generally remain ineligible during the entire trade dispute, this bill would restore eligibility after the first four weeks of absence due to a trade dispute, and would provide that the otherwise applicable one-week waiting period would not apply on top of this four week delay.

Status: Passed the Assembly and has passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.

Precluding Employer Voter Intimidation (AB 17)

Entitled the Voter Protection Act, this bill would add new Election Code section 14002 to preclude employers from requiring or requesting that an employee bring their vote by mail ballot to work or vote their vote by mail ballot at work. However, this new section would not prohibit an employer from encouraging an employee to vote. The Secretary of State or any public prosecutor with jurisdiction may seek civil fines up to $10,000 per violation against any employer who violates these protections.

Status: Passed the Assembly, and has overwhelmingly passed the Senate Judiciary and Appropriations Committees and is pending on the Senate floor. This bill appears unopposed.

Employer Notices Regarding Flexible Spending Accounts (AB 1554)

Responding to concerns employees are forfeiting funds not spent by year-end for flexible spending accounts, this bill would require employers to notify employees participating in a flexible spending account (including dependent care flexible spending accounts, health flexible spending accounts, or adoption assistance flexible spending accounts) of any deadlines to withdraw funds before the plan year ends. This notice shall be by two different forms, one of which may be electronic, and may consist of the following non-exclusive means: (1) email; (2) telephone; (3) text message; (4) postal mail; or (5) in-person notification.

Status: Unanimously passed the Assembly, and has unanimously passed the Senator Labor and Appropriations Committees and is pending on the Senate floor. This bill appears unopposed.

Prevailing Wage Expansion (AB 520)

California's prevailing wage laws require that work performed on certain public works (as defined) be paid not less than the general prevailing wage for work of a similar character in the location in which public work is performed. In turn, Labor Code section 1724 defines "locality in which public work is performed" as either the county in which the contract is awarded in some instances, and as the limits of the political subdivision in other instances. This bill would eliminate that distinction and instead define "locality in which public work is performed" as the county in which the public work is done.

Labor Code section 1720 presently exempts from the definition of "public works" certain

private development projects if the political subdivision provides – directly or indirectly – a "de minimis" public subsidy. This bill would define such public subsidies as de minimus if they are both less than $275,000 and 2% of the total project bid.

Status: Passed the Assembly, and has passed the Senate Labor Committee and is pending on the Senate floor.

Respirators for Outdoor Workers (AB 1124)

This bill would require the Occupational Safety and Health Standards Board to adopt by July 18, 2019, emergency regulations requiring employers to make respirators available to outdoor workers on any day the outdoor worker could reasonably be expected to be exposed to harmful levels of smoke from wildfires or burning structures due to a wildfire, while working. If enacted, it would take effect immediately.

Status: Unanimously passed the Assembly, and has unanimously passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.

Updated OSHA Requirements for Reporting Serious Occupational Injuries (AB 1804)

While employers presently must submit a report of serious injury, illness or death to the Division of Occupational Safety and Health by telephone or email, this bill would delete the "or email" requirement and instead direct the employer to use "a specified online mechanism established by the Division" for reporting purposes, or a telephone. However, until the online mechanism is available, the employer may continue to use telephone or email.

Status: Unanimously passed the Assembly and the Senate and will likely be sent to Governor Newsom after the Assembly concurs in recent Senate amendments. This bill appears unopposed.

Changes Proposed to OSHA's Definition of "Serious Injury or Illness" (AB 1805)

To align California reporting laws with the currently more expansive federal law, this bill would recast slightly the definitions of "serious injury or illness" and "serious exposure" for purposes of triggering an employer's duty to notify the Division of Occupational Safety and Health. For instance, it would remove the 24-hour minimum time requirement for qualifying hospitalizations (other than for medical observation or diagnostic testing), would include the loss of an eye as a qualifying injury and include amputation (rather than loss of a body member). The term "serious exposure" would be recast to include exposure to a hazardous substance creating a "realistic possibility" (rather than the current "substantial probability") that death or serious physical harm in the future could result from the actual hazard created by the exposure.

Status: Passed the Assembly with some bipartisan support and has passed the Senate Labor

and Appropriations Committees and is pending on the Senate floor.

Private Employer Information not a Trade Secret under California Public Records Act (SB 749)

California's Public Records Act (CPRA) provides a general right for the public to request and obtain information maintained by public agencies, subject to various exceptions including "trade secret" information. Citing a concern that private industry employers are using the trade secret exemption to preclude disclosure of information showing their failure to comply with applicable wage laws or "Buy American" requirements, this bill would narrow the CPRA trade secret exemption. Specifically, it would specify that certain records of a private industry employer that are prepared, owned, used or retained by a public agency are not trade secrets and are public records.

The records that would be specifically exempted from trade secret status would include records of wages, benefits, working hours and "other employment terms and conditions" of employees working for a private industry employer or their subcontractor on a contract with a state or local agency. However, these disclosure requirements would not require the disclosure of the names and other personally identifying information of employees.

Status: Passed the Senate on a party-line vote and has passed the Assembly Judiciary Committee on a party-line vote and is pending in the Assembly Appropriations Committee. This bill appears heavily opposed.

Call Center Job Protections (AB 1677)

Entitled the Protect Call Center Jobs Act of 2019, this bill would require employers (as defined) of customer service employees working in a call center (as defined) to provide at least 120 days' notice to the Labor Commissioner before relocating the call center from California to a foreign country. If a violation occurs, the Labor Commissioner would be authorized to award either a civil penalty of up to $10,000 for every day of violation, or to award damages proportionate to the impact on the community as determined by a community impact study, which the employer shall pay for.

The Labor Commissioner will also compile and publish a list of employers providing notice regarding an intent to relocate, and the list will be made available to specified state entities. Employers appearing on the list will be ineligible for state grants, state-guaranteed loans, or tax benefits for five years after the date that the list is published, and would be ineligible to claim tax credits for five taxable years beginning on and after the date that the list is published.

Lastly, it would require that call center customer service work performed by a private entity for a state entity be performed in California by no later than 2021. This requirement would not preclude the contractor from temporarily utilizing a call center outside of California in a "disaster" (as defined) or for "overflow" (as defined).

Status: Passed the Assembly on a party-line vote, and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

Shortened Period for Notices of Adverse Action Involving State Employees (AB 1007)

In an effort to speed up investigations, this bill would amend the State Civil Service Act relating to state employees and require that many notices of adverse action be completed within one-year rather than three years. At the same time, however, it would specifically include #MeToo-related concerns (e.g., sexual harassment and sexual assault) within the allegations that remain subject to the longer three year period. Accordingly, as amended, a one-year time period would apply except for allegations of fraud, embezzlement, falsification of records, harassment on specified bases (e.g., race, religion, sex, etc.), or sexual assault.

A similar bill (AB 769) was vetoed by then-Governor Brown in 2015.

Status: Passed the Assembly on essentially a party-line vote, and has passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.