CALIFORNIA LEGISLATIVE SUMMARY

As the August 31st deadline approaches for the California Legislature to pass bills, there are a number of significant employment bills, including many dealing with COVID-19 issues, being considered. These include bills that would:

- Expand the CFRA to apply to employers with five or more employees and expand the family members for whom leave could be taken due to a serious medical condition (SB 1383);
- Expand workers' compensation coverage, including to presume employees who contract COVID-19 are covered (AB 664/SB 1159/AB 196);
- Amend AB 5, including expanding the exempted professional services and industries (AB 2257);
- Require employers to notify public agencies and co-workers following a COVID-19 exposure (AB 685);
- Require larger employers to annually submit "pay data reports" to the DFEH (SB 973);
- Require California corporations to have directors from "underrepresented communities" (AB 979);
- Require employers provide 10 days of bereavement leave (AB 2999);
- Add human resources professionals and supervisors to the list of "mandated reporters" for child abuse purposes (AB 1963);
- Extend for an additional year the "employment" exemptions from the California Consumer Privacy Act (AB 1281);
- Expedite the process for the DIR to approve "work sharing plans" submitted by employers in lieu to layoffs (AB 1731);
- Impose new notice requirements for H2-A employers related to emergency or disaster declarations (SB 1102).

As discussed herein, the DFEH has also announced that its online harassment training video for supervisors is now available.

Below is an overview, arranged largely by subject matter, of the key employment bills currently pending, beginning with the various COVID-19-related proposals.

PENDING BILLS

COVID-19-Related Proposals

Expedited Work-Sharing Plan Procedures (AB 1731)

California currently authorizes employers to participate in "work sharing" plans as an alternative to layoffs, with the affected employees able to obtain unemployment insurance benefits from the Employment Development Department (EDD) for the reduction in wages as a result of this work sharing arrangement. Presently, under Unemployment Insurance Code provision 1279.5(c), employers must submit a signed written work sharing plan to the agency for approval based upon specific criteria in that section.

This bill is intended to develop a faster alternative process for the submission and approval of these employer work sharing plan applications. Accordingly, it would require the Employment Development Director to accept electronically submitted applications and to develop a portal on its internet website for these applications to be submitted. It would also provide that any work sharing plan applications submitted by eligible employers between September 15, 2020 and September 1, 2023 to be deemed approved for one year upon receipt.

The bill would also require the EDD to forward electronically to each eligible employer a claim packet for each participating employee within five business days following approval of the application. Once the claim packet documents are completed, the EDD would establish an unemployment insurance claim for each employee, with the employer and employee responsible for subsequently completing and updating any weekly certification requirements.

This is an urgency bill that would take effect immediately, and would remain in effect until January 1, 2024, at which point it would be automatically repealed unless extended or replaced.

Status: Passed the Senate Labor Committee and is pending in the Senate Appropriations Committee and appears unopposed. Because these "work sharing" plans were only recently added, this bill would need to return to the Assembly for concurrence.

Workers Compensation Coverage for Employees (SB 1159)

This bill would codify Governor Newsom's recent Executive Order (N-62-20) and define "injury" for workers compensation coverage to include any employee with a COVID-19-related illness under certain circumstances. Specifically, until January 1, 2024, an employee's COVID-19-related illness would be included within workers' compensation coverage if all of the following applied: (1) the employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor at the employer's place of employment (not including an employee's home or residence) at the employer's direction; (2) this day of labor occurred between March 19, 2020 and July 5, 2020; and (3) the diagnosis was made by a licensed physician and confirmed by further testing within 30 days of the date of diagnosis. Such COVID-19-related

illnesses that develop or manifest during this employment would be entitled to a rebuttable presumption (as defined) to have arisen out of the course and scope of employment.

This bill would also require an employee to exhaust any paid sick leave benefits specifically available in response to COVID-19 before any temporary disability benefits or other benefits due under certain workers' compensation provisions would be payable. If no such paid sick leave is available, the employee would be immediately entitled (i.e., no waiting period would apply) to temporary disability benefits.

The bill would also enact somewhat similar coverage rules and presumptions for certain peace officers, firefighters and health care workers, amongst other groups.

It would also announce the Legislature's intent to develop policies and procedures to create a disputable workers compensation presumption for employees diagnosed with COVID-19 as part of an outbreak at a specific place of employment.

Status: Passed the Senate and is pending in the Assembly Insurance Committee.

Employer Notices Following COVID-19 Exposure (AB 685)

While California's workers compensation system requires employers to notify the appropriate government agencies about occupational injuries resulting in lost time and serious occupational injuries, this bill would enact new mandatory employer notification requirements related to COVID-19 exposures.

Specifically, within 24 hours of employer awareness an employee has been exposed to COVID-19, the employer would need to take all of the following steps: (1) provide sufficient notice (as specified) to all employees at the worksite where the exposure occurred that they may have been exposed to COVID-19: (2) notify via sufficient notice (as specified) the exclusive representative, if any; (3) notify all employees and any exclusive representative of options for exposed employees including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions; (4) notify all employees and any exclusive representative of the cleaning and disinfecting plan the employer will implement prior to resuming work; (5) notify the Division of Occupational Safety and Health of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related; and (6) notify the California Department of Public Health and the appropriate local public health agency of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.

For purposes of triggering these notification requirements, "exposed to COVID-19 means exposure to any of the following: (1) a positive COVID-19 test; (2) a positive COVID-19 diagnosis from a licensed health provider; (3) a COVID-19-related order to quarantine from a licensed health provider; or (4) a fatality that was or could have been caused by COVID-19.

Failure to provide this information would be considered a misdemeanor and be punishable by a $10,000 fine.

The state agencies receiving this information would publish this information on their internet websites in a manner to allow the public to track outbreaks. The State Department of Public Health would also establish a procedure for employers to report COVID-19 cases and make this information available on its website.

Status: Passed the Senate Labor Committee and is pending in the Senate Appropriations Committee. Since these provisions were only included in June 2020 amendments, this bill would need to return to the Assembly for concurrence in these amendments.

Workers' Compensation Coverage for "Essential" Workers (AB 196)

This bill would define "injury" for workers compensation purposes to include industries/occupations deemed essential by Governor Newsom's Executive Order of March 19, 2020 (unless specifically exempted by this bill) and to include COVID-19 that develops or manifests itself during a person's employment. For those enumerated occupations, it would create a conclusive presumption that for "injuries" arising after March 4, 2020, the injury arose from the course and scope of employment.

Status: Pending in the Senate Appropriations Committee, and because this bill was substantively amended to include these current provisions in the Senate, it would need to return to the Assembly for concurrence.

Workers' Compensation Coverage for COVID-19 Injuries for First Responders and Employer Requirement to Provide PPE (AB 664)

While California Labor Code section 6401 presently requires employers to provide adequate safety devices and safeguards, this bill would require every employer to provide or reimburse an employee for emergency equipment or personal protective equipment (PPE) that provides or is ancillary to other emergency equipment or PPE that provides protection from injury. However, the failure to provide these items would not constitute a misdemeanor.

This bill would also define "injury" for workers compensation coverage purposes to include certain state and local firefighting personnel, peace officers, certain hospital employees and certain fire and rescue services coordinators who work for the Office of Emergency Services to include being exposed to or contracting COVID-19 or other communicable diseases as part of a state or local emergency declaration. This bill would create a conclusive presumption (as specified) such injury arose out of the course and scope of employment, and exempt these provisions from the normal apportionment requirements. It would establish specific rules related to compensation of such injuries, including full medical treatment, quarantine costs, reimbursement for personal protective equipment and disability and death benefits.

If enacted, this urgency bill would take effect immediately.

Status: Pending in the Senate Labor Committee, and because this bill was substantively amended to include these current provisions in the Senate, it would need to return to the Assembly for concurrence.

Small Business Exemption from COVID-19 Liability (AB 1035)

This bill would exempt small businesses (25 or fewer employees) from liability from injury or illness due to COVID-19 based upon a claim that the person contracted COVID-19 at the small business or due to the actions of the small business, if the small business has implemented and abided by all applicable state and local health laws, regulations and protocols. However, this exemption would not apply if the injury or illness resulted from a grossly negligent act or omission, willful or wanton misconduct, or unlawful discrimination by the business or its employees.

This bill would take effect immediately, but only be in effect until January 1, 2023.

Status: Pending in the Senate Judiciary. Because these particular provisions were only added in June 2020, this bill would need to return to the Assembly for concurrence.

Notice Requirements Regarding State or Federal Emergencies, plus Labor Notices for Federal H-2A Visa Farm Workers (SB 1102)

Labor Code section 2810.5 presently requires employers provide notices to most employees upon hire identifying certain statutorily-enumerated items (e.g., rate of pay, regular paydays, employer name, etc.). This bill would also require these notices identify the existence of either a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed and that was issued within 30 days prior to the employee's first date of employment that may affect their health and safety during their employment.

The federal H-2A program provides a temporary federal visa to farm workers admitted into the United States for work in the agricultural industry, including in California. While the federal H-2A workers are covered by many federal, state and local labor laws and are provided a "job order" summarizing some applicable federal laws, this bill attempts to address concerns that this job order does not identify key worker protections under California law.

Accordingly, new Labor Code section 2810.6 bill would require all of California's H-2A's visa employers provide to all H-2A farm workers a written notice of basic California labor rights on their first day of work in California or beings work for another employer after being transferred by an H-2A or other employer. The California Labor Commissioner would be required to develop by January 2, 2021, a template that H-2A employers may use to comply with these notice requirements, and the Labor Commissioner will have the discretion to decide whether this template will be included as part of the notices presently required under Labor Code section 2810.5.

This template would include in a separate and distinct section a "Summary of Key Legal Rights of H-2A Workers Under California Law," detailing many California labor rights, including the right to meal and rest periods, overtime, prohibited deductions, sexual harassment requirements and anti-retaliation protections.

Echoing the proposed changes to Labor Code section 2810.5 regarding generally applicable hiring notices, section 2810.6 would also require this notice identify any federal or state emergency or disaster declarations that may affect this H-2A employment. It would also prohibit any retaliation against H-2A employees who raise questions about such declarations.

To the extent any such disaster or emergency declaration would require additional steps regarding housing, required toilets, handwashing stations, drinking water and heat working conditions, the H-2A employer would be required to notify the H-2A employee of these changes, and would be prohibited from retaliating against any H-2A employee who inquired about these changes.

Employers would also be required to notify every H-2A employee of any federal or state emergency or disaster declaration within seven days of it being issued that may affect the H-2A employee's health or safety. Employers would also be prohibited from retaliating against H-2A employees that raise questions about the declaration's requirements or recommendations.

For employees required to work at night, the employer would be required to provide reflective garments and headlamps or other approved lighting for work areas, and to conduct safety meetings advising H2-A employees of the location of certain items, including bathrooms and rest areas.

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

COVID-19 Specific OSHA Standards for Agricultural Employers and Employees (AB 2043)

This bill would require California's Occupational Safety and Health Standards Board to disseminate to agricultural employers "best practices" for COVID-19 prevention, consistent with the division's guidance or in coordination with other state agencies, including the guidance document entitled "Cal-OSHA Safety and Health Guidance: COVID-19 Infection Prevention for Agricultural Employers and Employees." It would also require the division to collaborate with various organizations to conduct a statewide outreach campaign targeted at agricultural employers to disseminate these best practices and to educate employees on any COVID-19-related employment benefits to which they are entitled, including access to paid sick leave and workers' compensation. These provisions would be repealed when the state of emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature.

This bill would take effect immediately as an urgency statute.

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

Supplemental Paid Sick Leave and Handwashing Breaks for Food Facility Employees (SB 729)

This bill would draw upon "supplemental paid sick leave" bills such as Governor Newsom's Executive Order for "essential workers" and those enacted at in several municipalities to enact additional protects for food facility employees.

For instance, it would amend the Health and Safety Code to specifically authorize food employees in any food facilities to wash their hands every 30 minutes, and even more often if needed.

It would also amend California's Paid Sick Leave provisions (Labor Code section 245 *et seq.*) to provide "food sector workers" (as defined) COVID-19 "supplemental paid sick leave" on top of the paid sick leave those workers already receive under the state law. The hiring entity would be required to provide such supplemental paid sick leave to food sector workers who work for or through the hiring entity if that worker cannot work due to any of the following reasons: (A) the food sector worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (B) the food sector worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or (C) the food sector workers is prohibited from working by the food worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

Eligible food sector workers would be entitled to 80 hours of COVID-19 supplemental paid sick leave if "full time" or worked an average of 40 hours the two weeks preceding the need for leave, and lesser amounts (as specified) if the worker is not considered "full time." Workers would be immediately entitled to use this supplemental paid sick leave (i.e., there is no 30 day employment period), and they could use it upon oral or written request (i.e., no need for medical certification) and the worker would determine how much to use. The hiring entity also could not require the worker to use other paid time off provided by the hiring entity before or in lieu of the worker using this supplemental paid sick leave. However, the hiring entity would not be required to provide this supplemental paid sick leave if it already provides a similar benefit capable of being used for the same purposes as this supplemental benefit

The supplemental paid sick leave would be paid at a rate equal to the highest of either: (A) the food sector worker's regular rate for the last pay period; (B) the state minimum wage; or (C) the local minimum wage to which the worker is entitled. However, as with the federal FFCRA, the hiring entity would not be required to pay more than $511 daily and $5,110 in the aggregate for the supplemental paid sick leave taken by the worker.

The Labor Commissioner would be required to develop a model notice regarding this benefit by February 2021 that the hiring entity would need to post, but the hiring entity could satisfy this notice requirement for workers that do not frequent a workplace by disseminating through electronic means or email.

The provisions of this new law would be enforceable under the Business and Professions Code for unfair business practices, or by a complaint with the Labor Commissioner. Notably, while the bill refers to "workers" and "hiring entities" rather than "employees" and "employers," it states that for Labor Code purposes and this bill, "food sector workers" and "hiring entities" shall be considered employees and employers respectively.

This law would remain in effect for the duration of any local or state emergency duly proclaimed under California law, but workers using such benefit when the law expires would still be entitled to use the full amount of COVID-19 supplemental paid sick leave.

Status: Pending in the Assembly Rules Committee. Because these particular provisions were only added in June 2020, this bill would need to return to the Senate for concurrence.

Leaves of Absence/Time off/Accommodation Requirements

CFRA and PDL Expansions to Apply to Almost All Employers (SB 1383)

The California's Family Rights Act (CFRA, Government Code section 12945.2) is the state law equivalent of the Family Medical Leave Act and allows eligible employees to take up to 12 workweeks of job-protected leave for certain specified reasons (e.g., to bond with a newborn child, to care for the serious health condition of the employee or family member). While the CFRA presently requires the employee work at least 1,250 hours in the 12 month period preceding such a leave (thus mirroring the FMLA), this bill would eliminate the 1,250 hours of service and the 12 months of service, and require only the employee have 180 days of service with the employer to qualify for up to 12 weeks of job protected leave. It would also drop from 50 employees to five employees the threshold number of employees for an employer to be subject to CFRA, thus applying it to almost every employer in California. Because this new threshold would essentially apply to almost all employers, there would also no longer be a requirement for an employer have 50 employees within 75 miles of the employee's worksite to entitle the employee to a CFRA leave.

This bill would also expand the definition of "family care and medical leave" by changing the list of individuals for whom leave could be taken to provide care. For instance, while "family care and medical leave" presently includes the serious health condition of a child, spouse or parent of an employee, this bill would expand this list to include a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner" who has a serious health condition. The bill would make corresponding changes including these individuals for whom the employer may request medical certification to support the employee's request for leave to care for a serious health condition.

The definition of "child" would also expand to include a child of a domestic partner or person to whom the employee stands in loco parentis, and would eliminate the current requirement the child be under 18 years of age or an adult dependent child.

The bill also would define "grandparent," "grandchild," "sibling" and also "parent-in-law," suggesting that if enacted, this bill contemplates allowing time off for parents-in-law even though

not currently specifically enumerated in the definition of "family care and medical leave."

The definition of "family care and medical leave" would also be expanded to include "qualifying exigencies" related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child or parent in the United States Armed Forces.

This bill would also delete a current CFRA provision that provides if both parents are employed by the same employer and are otherwise entitled to leave, the employer would not be required to grant leave that is greater than 12 weeks for the birth, adoption or foster care of a child.

While CFRA currently allows an employer to refuse reinstatement to the same or comparable position under certain conditions, this bill would delete those provisions, thus essentially guaranteeing reinstatement.

In 2017, California enacted the New Parent Leave Act (SB 63, Government Code section 12945.6) requiring employers with 20 or more employees to provide up to 12 weeks leave to bond with a child. Because SB 1383 would essentially supersede this law by expanding job protected leave for the same purpose to even smaller employers, it would repeal Government Code section 12945.6. Accordingly, the dramatically-expanded CFRA would now govern parent leave.

Lastly, while the current Pregnancy Disability Leave Law (PDL, Government Code section 12945) currently applies to employers with five or more employees, these amendments would expand the PDL to apply to employers with one or more employees (essentially all employers).

This bill is very similar to SB 135 which stalled in the Senate in 2019.

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

"Kin Care" Amendments (AB 2017)

This bill would amend California's so-called "kin care" statute (Labor Code section 233) to specify that the designation of sick leave for kin care purposes shall be made at the sole discretion of the employee. The author states it is intended to ensure the employee, not the employer, gets to designate how sick leave is credited and to preclude situations where an employer charges a sick day against kin care purposes, thus reducing the amount of kin care usage available for later purposes.

Status: Unanimously passed the Assembly, and also unanimously passed the Senate Labor Committee and is pending in the Senate Appropriations Committee. This bill appears unopposed.

Bereavement Leave (AB 2999)

Entitled the Bereavement Leave Act of 2020, this bill would require employers with 25 or more employees to provide up to 10 business days of bereavement leave upon the death of a spouse, child, parent, sibling, grandparent, grandchild or domestic partner (as these terms are defined

either in this or other specified Labor Code sections). (Employers with fewer than 25 employees would need to grant three business days of leave). The days of bereavement leave would not need to be consecutive, but would need to be completed within three months of the date of the person's death. The bereavement leave would be unpaid (unless the employer has an existing bereavement leave policy), but an employee may use otherwise accrued or available vacation, personal leave, or compensatory time off.

This law would apply to all employers (regardless of size) and to all employees (regardless of amount of time employed with the employer. However, it would not apply to employees covered by a collective bargaining agreement including specified provisions.

If requested by the employer, an employee would need to provide within 30 days of the first day of the leave documentation of the person's death, including a death certificate, a published obituary or written verification of death, burial or memorial service from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency. Employers would be required to maintain the confidentiality of employees requesting this leave and to treat any documentation obtained as confidential and not disclosed except where required by law.

An employee who believes they have been discriminated or retaliated against for exercising their bereavement leave rights would be entitled to file either a complaint with the Labor Commissioner or a civil complaint. A prevailing employee would be entitled to reinstatement, actual damages, as well as attorneys' fees and costs.

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

Protected Time-Off Proposals (AB 2992)

Labor Code section 230 presently prohibits discrimination against and enumerates various protections for employees who need to take time off for various purposes, including because of jury duty (subsection (a)), appearing in court, including because a victim of a crime (subsection (b)), or for victims of domestic violence, sexual assault or stalking who are seeking legal relief (subsection (c)). This bill is intended to essentially extend these time-off leave provisions from applying to only victims of certain enumerated serious crimes and instead apply broadly to almost all victims of violent crime.

Accordingly, it would expand the definition of victim for many of its provisions to include any of the following: (1) victims of stalking, domestic violence or sexual assault; (2) a victim of a crime that caused physical injury or that caused mental injury and a threat of physical injury; (3) the immediate family member of a person who is deceased as the direct result of a crime; or (4) for purposes of subsection (b) [appearing in court in response to a subpoena or court order], any person against whom any crime has been committed.

Currently existing subsection (c) prohibits discrimination or retaliation against employees who are a "victim" and takes time off to obtain legal relief, including a TRO or other injunctive relief

for the health or safety of them or their child. Current subsection (d) requires the employee provide advance notice where feasible, and identifies the following forms of acceptable certification to justify the absence: (1) a police report; (2) a court order; or (3) documentation from enumerated health care providers, medical professionals or domestic violence counselors. This bill would add to this third category "victim advocate" defined as an individual providing services to victims "under the auspices or supervision" of either an agency or organization providing services to victims , or a court or law enforcement/prosecution agency.

It would also add a fourth catch-all category of acceptable documentation that "reasonably verifies" the crime or abuse occurred, including a written statement from the employee or an individual acting on their behalf, certifying the absence is authorized under section 230 or section 230.1.

It would also identify a new definition of "crime" and "immediate family member" for purposes of section 230.

While section 230 applies to employers of all sizes, Labor Code section 230.1 prohibits employers with 25 or more employees from discriminating against victims of sexual assault, domestic violence or stalking who take time off for additional purposes (e.g., seeking medical attention, obtaining services from certain agencies, obtaining psychological counseling, participating in safety planning). This bill would largely incorporate the above-described changes to section 230, including its expanded definition of "victim" (i.e., broader than simply domestic violence, sexual assault or stalking) and the expanded certification for unforeseen absences.

It would also expand the purposes for which the time off could be taken, expanding it from the current requirements the services relate to sexual assault, domestic violence or stalking, and instead apply for any qualifying "crime" or abuse.

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

"Qualifying Exigency" Changes for Paid Family Leave Purposes (AB 2399)

California's Paid Family Leave program currently provides wage replacement benefits for employees who take time off for certain specified purposes, including a "qualifying exigency" related to specified family member's covered active duty in the United States Armed Forces. This bill would revise the definitions of "care recipient," "care provider" and "family care leave" for purposes of the qualifying exigency provisions. It would also define the term "military member," including for purposes of these revised definitions relating to qualifying exigencies. It would also make conforming changes related to the documentation requirements of a qualifying exigency.

This has been introduced as a Committee Bill suggesting it has bipartisan support and no recorded opposition.

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

Harassment/Discrimination/Retaliation

DFEH Unveils On-Line Harassment Training Video for Supervisory Employees

In 2018, California materially expanded its so-called AB 1825 harassment training in two respects: (1) requiring employers with five or more employees (rather than the previous fifty or more employees) provide harassment training; and (2) requiring it be provided to both supervisory and non-supervisory employees (rather than the previous requirement of supervisors only). Following further amendment in 2019, Government Code section 12950.1 presently requires this harassment training be provided by January 1, 2021 except for employees trained in 2019 who will not need to be trained again until the required refresher training two years after the most recent training.

This section also requires the DFEH to develop or obtain on-line harassment training courses that employers may use to satisfy their mandatory training obligations for the supervisory and non-supervisory employees. In July, the DFEH announced that its on-line training courses for supervisory and non-supervisory employees are now available online at https://www.dfeh.ca.gov/shpt/. The DFEH describes these programs as interactive and optimized for mobile devices and accessible for persons with disabilities. The DFEH's course is also available in English, Spanish, Simplified Chinese, Tagalog, Vietnamese and Korean. Finally, it also includes instruction on how sexual harassment may interact with other forms of discrimination, and includes training on gender identity, gender expression and sexual orientation.

Harassment Training for Minors in Entertainment Industry (AB 3175)

This industry-specific bill would require that, before an entertainment work permit is issued to minors, the parents of minors aged 14 to 17 years must ensure the minors complete sexual harassment training provided by the DFEH (including its online training) or other legally-compliant training. The training would need to be provided in a language the person can understand whenever reasonably possible.

This bill would take effect immediately as an urgency statute.

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

Training Exemption for Minors in the Entertainment Industry (AB 3369)

This bill would clarify that otherwise mandatory sexual harassment training for minors in the entertainment industry would remain governed by the industry specific training requirements in Labor Code section 1700.52 rather than the more generally applicable training requirements in the Fair Employment and Housing Act and Government Code section 12950.1.

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

Independent Contractors/Worker Classification

AB 5 Amendments for Various Additional Industries and Professional Services, including Photographers, Freelance Writers and the Music Industry (AB 2257)

Enacted in 2019, AB 5 codified and expanded the so-called *Dynamic* ABC Test to determine work classification relationships, and also contained a staggering number of exemptions for various professional services and industries, which would instead be governed by the prior *Borello* test. Almost immediately it was clear that further amendments would be needed both to address additional industries and relationships, and to clarify AB 5's language.

Drafted by AB 5's author, this bill would revise several of the exemptions currently contained in Labor Code section 2750.3, and add further exemptions.

For instance, it would enact an entirely new subsection (proposed subsection (g)) related to various music industry occupations in connection with the creating, marketing, promoting or distributing sound records or musical compositions, which would be governed by *Borello* rather than the ABC Test. These would include: (a) recording artists (but with some exceptions); (b) songwriters, lyricists and composers; (c) managers of recording artists; (d) record producers; (e) musical engineers and mixers; (f) musicians (with some exceptions); (g) vocalists (with exceptions); (h) photographers working on recording photo shoots, album covers and other publicity purposes; and (i) independent radio performers.

However, as the above notes, there would be numerous carve outs to these exemptions, and there would be new limitations applicable to collective bargaining agreements and organizing rights within the music industry.

While new subsection (g) would govern the creation of sounds recordings in the music industry, new subsection (h) would instead govern "single engagement live performance events," and have them governed by *Borello* under certain enumerated circumstances. The rules regarding these "live performance events" are quite detailed so the reader is encouraged to review proposed subsection (h) if potentially applicable.

One of the more controversial aspects of AB 5 was its rules regarding both photojournalists/still photographers and freelance writers/editors/cartoonists, and the limitation of only 35 submissions to any "putative employer" to qualify for an exemption to the ABC Test. This bill would delete the current statutory exemptions for these particular "professional services" and replace them with new statutory exemptions that remove the 35 submission/project cap and use alternative criteria to determine when *Borello* should apply. Broadly summarized, photojournalists/still photographers and freelance writers/editors/cartoonists/translators who (a) work under a contract containing certain terms; (b) are not replacing an employee performing the same work at the same volume; (c) do not primarily perform the work at the hiring entity's

business location; and (d) the individual is not restricted from performing work for more than one hiring entity.

It would also amend several provisions or definitions within Labor Code section 2750.3, including regarding "commercial fisherman" and "travel agent services."

Further, this bill would also amend the so-called "professional services" exemption in current subsection (d) by adding "specialized performers" hired by a performing arts company or organization to teach a "master class" (as defined) for no more than one week.

It would also create additional professions or occupations, including for underwriting inspections, manufactured housing salespersons, international exchange visitor program workers and competition judges with specialized skills. It would also create exceptions for specialized performers teaching master classes and real estate providers.

The so-called "referral agency" exemption in section 2750.3(c) currently exempts from the ABC Test relationships between a referral agency and a service provider that satisfy statutorily-enumerated conditions. This bill would add "youth sports coaching" to the definition of "referral agencies" whose relationships with service providers are not governed by the ABC Test. Simply summarized, "youth sports coaching" would mean sports coaches for training and engaging in athletic activity and competition for children under 18 years of age, but would not coaches contracted with a public school.

Within this referral agency exemption, it would also expand current the definition of "tutor."

This urgency bill would take effect immediately if enacted.

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

Pay Equity Issues

Annual Pay Data Reports (SB 973)

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 challenged 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), which 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.

The information submitted to the DFEH would also need to be made available in a format that would enable the DFEH to search and sort the information using readily available software.

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.

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).

This bill would also authorize the DFEH to "receive, investigate, conciliate, mediate and prosecute complaints" alleging equal pay violations under Labor Code section 1197.5. However, the DFEH would be required to coordinate with the DLSE and the DIR to enforce these provisions.

Very similar bills were introduced by the same author in 2018 (SB 1284) and 2019 (SB 171) but stalled in the Assembly after passing the Senate.

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

Requirement for California Corporations to Have Directors from "an Underrepresented Community" (AB 979)

In 2018, California enacted SB 826, which required publicly held, domestic or foreign corporations with their principal executive offices in California to have a certain number of females on their board of directions, with the threshold number dependent on the applicable statutory deadline and the size of the board of directors.

This bill would enact very similar provisions and require such corporations to have at least a certain number of directors from "an underrepresented community," defined as individuals who are "Black, African-American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native.

Thus, by no later than the close of the 2021 calendar year, each publicly held, domestic or foreign corporation with its principal executive offices in California (according to the corporation's SEC 10-K form) must have at least director from an underrepresented community on its board of directors. The corporation will be permitted to increase the number of directors on its board to comply with this requirement. By the close of the 2022 calendar year, the corporation must have at least two such members if it has four but less than nine directors, and three such members if it has more than nine directors. If the board has four or fewer members, the corporation shall have at least one member from an underrepresented community.

A "publicly held corporation" means a corporation with "outstanding shares listed on a major United States stock exchange."

The law also requires the Secretary of State to publish various reports on its web site documenting the number of corporations in compliance with these provisions, and to impose fines for non-compliance. The Secretary of State may impose fines for violating this section of $100,000 for the first violation and $300,000 for each subsequent violation. Each director seat required by this section to be held by a an underrepresented director which is not held by such a member during at least a portion of a calendar year shall count as a violation, but an underrepresented community director having held a seat for at least a portion of the year shall not be a violation.

Status: Currently pending in the Senate Labor Committee, but since these provisions were only included in June 2020 amendments, this bill would need to return to the Assembly for concurrence in these amendments. As noted, this bill is very similar to SB 826, which passed the legislature largely along party line votes.

<u>Wage and Hour</u>

Expanded Statute of Limitations and Attorneys' Fees Recovery for Labor Code Violations (AB 1947)

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 one year 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.

Similar bills (AB 2946 and AB 403) failed passage in the Assembly in 2018 and 2019.

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

Labor Commissioner Involvement in Arbitration of Wage Claims (SB 1384)

This bill would enable an employee who cannot have his wage claims determined by the Labor Commissioner because of an arbitration agreement with their employer to request the Labor Commissioner to represent them in the arbitration proceeding. The Labor Commissioner shall represent the employee if they are unable to afford counsel and the Labor Commissioner determines, upon conclusion of an informal investigation, that the claim has merit.

It would also require the petition to compel arbitration of a claim pending before the Labor Commissioner be served upon the Labor Commissioner. Upon the employee's request, the Labor Commissioner shall have the right to represent the employee in proceedings to determine enforceability of the arbitration agreement, either in court or with the arbitrator.

Status: Passed the Senate and is pending on the Assembly floor.

Online Tracking of Wage Claims and Annual Data (AB 3053)

This bill would take effect July 1, 2021 and require the Labor Commissioner to update its website to develop a portal whereby "aggrieved employees" could submit and track their claims, and submit requested documents.

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

Wage and Hour Rules for Warehouse Distribution Center Employees (AB 3056)

Responding to concerns that workers at warehouse distribution centers (as defined) employed under a quantified performance quota are being cheated, this bill would establish various new wage and hour protections specifically for such employees. Specifically, it would prohibit such a

"quota" (as defined) system that counts against the quota reasonable time spent (a) accessing and using a restroom or adequate hydration; (b) documenting or reporting an employer's violation of the Labor Code; or (c) taking any legally mandated rest, recovery or meal period.

It would also authorize the DLSE to enforce these provisions and to adopt regulations to implement these provisions.

It also authorize civil penalties of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation. These civil penalties would be in addition to any other penalty provided by law.

Status: Passed the Assembly on a largely party line vote, and is pending in the Senate Appropriations Committee.

Secretary of State Involvement Regarding Outstanding Wage Judgments and Successor Employer Liability (AB 3075)

California's Corporation Code requires certain business entities file articles of incorporation containing statutorily-enumerated information. This bill would require filers for the these articles of incorporation sign a statement under penalty of perjury that there are no outstanding judgments issued by the Division of Labor Standards Enforcement or a court for any violation of a wage order or the Labor Code.

Separately, California law currently provides that a successor employer of property service workers is liable for any wages, damages and penalties owed by the predecessor employer if certain criteria are met. This bill would add new Labor Code section 200.3 to make any successor employer (not simply for property service workers) liable for wages, damages and penalties owed by the predecessor employer pursuant to a final judgment if the successor employer meets certain criteria.

Specifically, the successor employer would be liable if it meets any of the following criteria: (a) it uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the predecessor employer (with some statutory exceptions); (b) it has substantially the same owners or managers that control the labor relations as the predecessor employer; (c) it employs as a managing agent (as used under Civil Code section 3294) any person who directly controlled the wages, hours, or working conditions of the affected workforce of the predecessor employer; or (d) it is an immediate family member of any owner, partner, officer or director of the predecessor employer.

Status: Passed the Assembly and is pending in the Senate Appropriations Committee. The language regarding successor liability was only added while in the Senate so this bill would need to return to the Assembly for concurrence.

Expanded Liability for Garment Manufacturers (SB 1399)

Enacted in 1999, AB 633 sought to prevent wage theft in the garment industry by making those who contracted for garment manufacturing liable as guarantors for the unpaid wages and overtime incurred in making their garments. This bill responds to concerns garment manufacturers have attempted to sidestep this liability by adding more layers between the entity requesting the work and those actually performing it. This bill amends the Labor Code to make clear that a person contracting to have garments made is liable for unpaid minimum wage and overtime wages to the workers who manufacture the garments regardless of how many layers of contracting that person may use. It would also impose new document retention requirements upon garment manufacturers. It would also create a presumption of employment for any claims filed with the Labor Commissioner if the worker provides labels with the garment manufacturers name or brand.

Status: Passed the Senate and is pending in the Assembly Labor and Employment Committee.

Extension for Petroleum Facility Rest Period Rules (AB 2479)

This bill would amend Labor Code section 226.75 and extend until January 1, 2026, the exemption from the generally-applicable rest period rules for specified employees holding safety-sensitive positions at petroleum facilities (as defined) if certain requirements are met.

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

New Rest Period Rules for Registered Security Officers (AB 1512)

This bill would, until January 1, 2027, amend Labor Code section 226.7 to implement new rest period rules for security officers registered pursuant to the Private Security Services Act and whose employer is a registered private patrol operator. Specifically, it would permit employers to require such security officers to remain on premises during rest periods and to remain on call, and to carry and monitor a communication device during rest periods. If a rest period is "interrupted," the security officer shall be permitted to restart the rest period anew as soon as practicable, and if the security officer is then able to take an uninterrupted rest period, the security officer employer will have satisfied its rest period obligation. However, if the security officer is unable to take an uninterrupted rest period of at least 10 minutes every four hours worked (or major fraction), then the employer shall pay one additional hour of pay for each workday the rest period is not provided.

The bill would clarify that "interrupted" for penalty provisions means being called upon to return to active duty before completing the rest period, and does not include simply being on the premises, remaining on alert or monitoring any communication devices.

However, this subdivision would only apply to such security officers that are covered by a valid collective bargaining agreement that contains specific provisions related to wages, hours of work etc.

In effect, this bill would nullify for purposes of security guards only the California Supreme Court decision in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, but would not apply to existing cases filed before January 1, 2021.

This bill would only remain in effect until January 1, 2027, at which point it would be automatically repealed and section 226.7 would revert back to its current statutory language.

Status: Unanimously passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.

Human Resources/Workplace Policies

Amendments Regarding Settlement Agreement Provisions for Future Employment (AB 2143)

In 2019, California enacted AB 749 to generally prohibit settlement agreement provisions limiting an "aggrieved employee's" ability to work for the settling employer. This bill would amend these prohibitions in two respects. First, it would require the aggrieved employee to have filed the initial complaint "in good faith." Second, while the current prohibition against "no rehire" provisions contains an exception if the employer has made a good faith determination the aggrieved employee engaged in sexual harassment or sexual assault, this bill would expand this exception to include "or any criminal conduct" but also require this good faith determination of the alleged disqualifying conduct be made and documented before the aggrieved employee filed a complaint.

Status: Unanimously passed the Assembly, and unanimously passed the Senate Judiciary Committee. This bill appears largely unopposed.

Wellness Program Requirements (AB 648)

Entitled the Wellness Program Protection Act, this bill would enact various prohibitions and requirements for health care service plans, insurers and employers. As to employers, this bill would enact new Labor Code section 436 to prohibit employers from requiring employees to participate in a wellness program as a condition of employment, or from retaliating against an employee either because the employee elected not to participate in the wellness program, or based on data collected through the wellness program about the employee.

An employer would also be prohibited from sharing personal information or data collected through a wellness program, and would be required to comply with state and federal privacy laws for any information collected through a wellness program.

The employer would also be required to post on its internet website a written explanation about the wellness program, including a description of the data collection process and which data will be collected, and the employee's rights concerning the wellness program under state and federal law. The employer would also be limited to collecting, disseminating and using only the employee's personal information reasonably necessary to operate the wellness program, and will be required to destroy any personal information received if the employee terminates their

participation or upon the conclusion of a wellness program. However, these restrictions on collecting and the requirement to destroy would not apply to certain instances (as defined) involving publicly available information or de-identified and aggregated information used for certain purposes.

Employees would also have the right to obtain a copy of their records, including any personal information collected by the employer pertaining to a wellness program, in a format accessible to the employees, and to challenge the completeness and accuracy of any records.

These provisions would apply, to the extent applicable, to any entity the employer contracts with to administer or operate a wellness program on the employer's behalf.

Employees would have the ability to file a complaint with the Labor Commissioner within six months after any violations, and persons who violate these provisions would be guilty of an infraction.

These provisions would not apply to certain wellness programs administered by licensed health care professionals, and would not limit or restrict the disclosure of personal information by an employer if otherwise required by law.

Status: Narrowly passed the Assembly and is pending in the Senate Health Committee.

Human Resources Required to Report Child Abuse (AB 1963)

The Penal Code's Child Abuse and Recovery Act requires statutorily-enumerated "mandated reporters" to report to specified agencies (e.g., police or county welfare) whenever they, in their professional capacity or within the scope of their employment, observe a child they know or reasonably suspect has been the victim of child abuse or neglect. If a mandated reporter fails to report a known or reasonably suspected case of child abuse or neglect, they face misdemeanor liability, including statutory penalties and potential jail time.

This bill would amend Penal Code section 11165.7 to expand the list of mandated reporters to include "human resources employees" for businesses that employ minors. "Human resources employee" would be defined as "the employee or employees designated by the employer to accept any complaints of misconduct" as required under the FEHA.

It would also add, for purposes of reporting sexual abuse (rather than simply child abuse or neglect) any adult person whose duties require direct contact with, and supervision of, minors in the performance of the minors' duties in the workplace of a business subject to the FEHA. This duty for supervisors to report sexual abuse would not obviate their obligation to also report child abuse or neglect if the individual is working in another capacity that would otherwise make them a mandated reporter.

This bill would also require employers subject to these new reporting requirements to train employees who fall within this definition of mandated reporter about these reporting duties (i.e., how to identify abuse/neglect and how to report it). The employer could satisfy this training

requirement by completing the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Department of Social Services.

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

Miscellaneous

Additional One Year Extension of Portions of California Consumer Privacy Act Proposed (AB 1281)

This bill would grant a further one year exemption (until January 1, 2022, rather than January 1, 2021) from the California Consumer Privacy Act (CCPA) of certain information gathered by a business about a natural person in the course and scope of that person's employment.

As background, the CCPA was enacted in 2018 and took effect in 2020 to enable "consumers" to request from covered businesses (as defined) 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), in 2019 the CCPA was amended by AB 25 to provide a one-year partial exclusion form the CCPA for employees acting within their scope as an employee.

Specifically, AB 25 amended Civil Code section 1798.145(g)(1) to specify the CCPA does not apply to personal information gathered by an employer in three specific circumstances. First, it does 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 does 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, AB 25 only provided a one year period (until January 1, 2021) for this exclusion, contemplating that further amendments would be made to the CCPA generally. AB 1281 would simply extend this exemption for an additional year (until January 1, 2022). It would also be contingent upon the voters not approving a ballot proposition related to the CCPA in the November 3, 2020 general election.

Status: Unanimously passed the Senate Judiciary Committee and appears unopposed. Because these particular provisions were only added in June 2020, this bill would need to return to the Assembly for concurrence.

Right of Recall for Certain Laid Off Employees (AB 3216)

This bill would expand statewide many of the provisions recently enacted in the City of Los Angeles' Right of Recall Ordinance and the Worker Retention Ordinance. Accordingly, proposed new Labor Code section 2810.8 would require covered employers (as defined, but generally including airport employers, qualified hotels and event center employers) to notify its laid off employees about job positions that become available that the employee previously held or is or could be qualified for. The employer would need to offer those positions based on a preference system outlined in the law, and would need to allow 10 business days for the employee to accept or decline the offer. Employers who decide to hire someone other than a laid-off employee would need to provide written notice to the laid-off employee identifying the reasons for the decision. Employees would be permitted to file a Labor Commissioner complaint or a civil action if these requirements are not followed.

The "retention" provisions would protect workers' jobs upon a change in ownership or control and require the incumbent business employer to provide a list of its workers to the successor employer, who must then hire from a preferential hiring list for a specified time period. In this regard, these worker retention provisions are very similar to the Los Angeles ordinance and to those enacted statewide in 2015 (AB 359) for the grocery industry upon a change in ownership or control.

Status: This bill passed the Assembly on largely a party-line vote and is pending in the Senate Appropriations Committee.

Cal-OSHA Protections for Household Domestic Service Employees (SB 1257)

This bill would remove the current exclusion for household domestic service employees from the California Occupational Safety and Health Act (Cal-OSHA), which governs health and safety in working conditions. It would, beginning July 1, 2022, extend coverage under Cal-OSHA to specified household domestic services and in-home child services funded by the In-Home Supportive Service program. It would require the Cal-OSHA head to convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to household domestic service, including for individuals with a disability.

It would also establish a protocol for Cal-OSHA representatives to investigate complaints of alleged serious violations in workplaces that are residential dwellings. It would also require the residential dwelling "employer" to investigate and, if needed, correct the violation and reports its efforts to Cal-OSHA, and to provide copies of all correspondence received from Cal-OSHA to the domestic service employee. It would also authorize Cal-OSHA representatives to enter into the residential dwelling with permission or with an inspection warrant to investigate complaints alleging death or serious injuries in household domestic service.

Status: Passed the Senate and is pending in the Assembly Labor and Employment Committee.

Expanded Unemployment Insurance Benefits for Family Members of In-Home Supportive Services (AB 1993)

While Unemployment Insurance Code section 631 presently excludes from coverage most family members working for another family member, this amendment would include services performed by an individual in the employ of their parent, child or spouse if that individual is providing services through the In-Home Supportive Services program or the Waiver Personal Care Services program.

Unemployment Insurance Code section 702.5 also presently authorizes an "employment unit" for whom services are performed that do not constitute employment under the insurance code for some purposes to elect that the services constitute employment for purposes of disability compensation. This bill would specify that purposes of computing these disability benefits and contributions, these individuals would be treated as individuals whose services ordinarily constitute employment under these particular provisions if the individual is providing services through the In-Home Supportive Services program or the Waiver Personal Care Services program.

This bill would take effect immediately as an urgency statute.

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

Effect of an Employer's Failure to Provide Requested Unemployment Insurance-Related Records (AB 1066)

While the Unemployment Insurance Code presently requires an employer to provide requested information within a "reasonable time" or face a conclusive presumption the employee is entitled to the maximum amount of benefits, this bill would instead set a 10-day deadline before such a conclusive presumption arose. This bill would similarly provide that if an employer with five or more claimants has failed to respond within the ten-pay period for any claimant, then all claimants would be conclusively entitled to the maximum amount owed, subject to the director's discretion to award a lesser amount.

However, as before, the director would still have the discretion to award less upon concluding a lesser amount is owed the claimant, and would have the discretion to extend these 10-day deadlines upon a determination of good cause for the delay in furnishing these records.

Status: Passed the Senate Labor Committee and is pending in the Senate Appropriations Committtee. However, since the current provisions were only added by Senate amendment in June 2020, the Assembly would still need to concur in these amendments.

Prevailing Wage Definition of "Locality" (AB 2231)

California law requires that a so-called "prevailing wage" be paid on "public works" (as defined) that are financed by public funds, but exempts private development projects where the public

funding is "de minimis" This bill would define "de minimis" as both less than $500,000 and less than 2% of the total project cost.

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

Personal Protective Equipment for Direct Care Workers (AB 2537)

This bill would require public and private employers of workers who provide direct patient care to supply those workers with personal protective equipment necessary to comply with DIR regulations regarding aerosol transmissible diseases and ensure their usage. It would also require the employer to ensure the employee uses the personal protective equipment supplied to them.

Covered employers would need to maintain a stockpile of unexpired personal protective equipment equal to six months of normal consumption. This equipment would also need to be new and not previously work or used.

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

Retaliation Protections for "Domestic Work Employees" (AB 2658)

Labor Code section 6311 presently precludes retaliation against employees who refuse to work in unsafe work environments. This bill would expand these protections from the current "employment in household domestic service" to include every person required or directed by an employer to engage in any employment or go to work or be at any time any place of employment, and includes a person employed for household domestic services.

Status: Passed the Assembly with strong bipartisan support and is pending in the Senate Appropriations Committee.

Safety Devices for Emergency Ambulance Employees (AB 2092)

This bill would require emergency ambulance employers to establish a voluntary personal protective equipment (PPE) program that allows emergency ambulance employees to purchase subsidized PPE pursuant to an employer-provided subsidy and authorize the employee to wear the PPE while on duty.

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

Educational Training Costs for Direct Patient Care Employees (AB 2588)

This bill would prevent employers from requiring applicants for employment that provides or seeks direct patient care to incur the costs of required educational programs or training.

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

Public Sector

School Employee Pay during Natural Disasters or Evacuation Orders (AB 805)

This bill would prohibit school districts from requiring certificated or classified employees to use sick, vacation or other paid leave if the school is forced to close because of a natural disaster or an evacuation order, or if the employee is unable to report to work because they reside in an area affected by a natural disaster or an evacuation order.

Status: Unanimously passed the Assembly and is ending in the Senate Rules Committee.

Union Protections for UC Employees (AB 3096)

This bill would authorize employee organizations to bring a claim before the Public Employment Relations Board regarding concerns the UC Regents discouraged or deterred union members. It would also authorize a prevailing employee organization on such claim to recover a statutory penalty of $1,000 for each affected employee and attorneys' fees and costs.

Status: Passed the Assembly with some bi-partisan support and is pending in the Senate Labor Committee.

Employee Information for Public Employers (SB 1173)

Various public sector laws (e.g., the Meyers-Milias Brown Act) require covered public employers to provide certain labor representatives with information about newly-hired employees (e.g., names/addresses, job titles, etc.) within a certain amount of time following hire. This bill would generally authorize an exclusive representative to file an unfair labor practices charge with the Public Employment Relations Board (PERB) for violating these requirements, and authorize civil penalties and would also authorize the PERB to process a charge as an expedited case if the charge alleges only a single violation.

Status: Narrowly passed the Senate, and passed the Assembly Public Employment Committee and is pending in the Assembly Appropriations Committee.