

2021 LEGISLATIVE UPDATE

Marta R. Vanegas, JD, LLM
January 12, 2021

Martin & Vanegas
Employment and Business Counsel 

1

AB 323:
CONTINGENT
WORKFORCE –
INDEPENDENT
CONTRACTORS

- Extends for one year (until January 1, 2022) the exception of newspaper carriers from the ABC test.
- Requires state agencies to give preference to local news organizations, specifically ethnic media and community organizations, in contracts and subcontracts for marketing and outreach advertising services.
- It also extends the newspaper carrier exemption from Dynamex for two additional years, allowing news outlets to stabilize from COVID-19 losses.

Martin & Vanegas, APC 1/12/2021

2

AB 685: COVID-19
NOTIFICATION

- If an employer receives a notice of potential exposure to COVID-19, the employer must provide written notice to all employees within one day and subcontracted employee who were on the premises at the same worksite within the "infectious period."
- If the employer is notified of COVID-19 cases that meet the definition of a COVID-19 outbreak as defined by the State Department of Public Health, the employer has 48 hours to notify the local public health agency.

Martin & Vanegas, APC 1/12/2021

3

AB 979: CORPORATE BOARDS – DIVERSITY

- Requires publicly traded companies headquartered in California to have a minimum number of directors from "underrepresented communities" on their board of directors.
- By 12/31/21, each such corporation must have min. one director from an underrepresented community (Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, gay, lesbian, bisexual, or transgender) Sliding increase in '22.
- Violations of AB 979 can result in fines of \$100,000 for a first violation and \$300,000 for any subsequent violation.

Martin & Vanegas, APC | 1/12/2021 | 4

4

AB 1281: PRIVACY

- Grants another one-year extension (until January 1, 2022) of the exclusion of certain Human Resources data from coverage under the California Consumer Privacy Act.
- Employers are reminded that they are covered by the notice provision of the CCPA, requiring them to provide notice to applicants/employees of personal information collected and the purposes for which it is used.

Martin & Vanegas, APC | 1/12/2021 | 5

5

AB 1512: SECURITY GUARDS – REST BREAKS

- Allows employers to require that certain unionized security guards remain on premises and on call during rest breaks (contra *Augustus v. ABM Security Services, Inc.*, 2016 D.J. 12608 (2016)).
- If the security officer's rest period is interrupted by being "called upon to return to performing the active duties of the security officer's post prior to completing the rest period," the security officer must be permitted to restart rest period as soon as practicable.
- NOT a defense to rest period violation claims filed before January 1, 2021.
- The law sunsets on January 1, 2027, unless extended.

Martin & Vanegas, APC | 1/12/2021 | 6

6

**AB 2479:
PETROLEUM
FACILITY
SAFETY-
SENSITIVE
EMPLOYEES-
REST BREAKS**

- Existing law allows employer to require that certain unionized employees in safety-sensitive positions at petroleum facilities remain on premises and on call during rest breaks; carry a walkie-talkie and respond to an emergency call.
- The sunset of this provision was extended to January 1, 2026.

Martin & Vanegas, APC | 1/12/2021 | 7

7

**AB 1731:
UNEMPLOYMENT
- WORK
SHARING**

- Automates parts of California's work sharing program and creates an alternative process for employers to submit and be approved
- Director of EDD must accept an application to participate in, or renew participation in, the work-sharing program that is submitted electronically.
- Applications submitted 9/15/2020 to 9/1/2023 are deemed approved for one year, except as specified.
- EDD to create a portal on its website for the receipt of work-share applications.
- Online claim forms will be available to the approved employer within 5 business days after approval.
- Upon completion of the claim packet, EDD to open an unemployment insurance claim as specified.

Martin & Vanegas, APC | 1/12/2021 | 8

8

**AB 1867:
SUPPLEMENTAL
PAID SICK LEAVE,
HANDWASHING,
& SMALL
EMPLOYER
FAMILY LEAVE
MEDIATION**

- Requires private employers with 500 or more employees nationwide to provide COVID-19-related supplemental paid sick leave to their California employees.
- Creates two new Labor Code sections:
 - 248 (food service workers) and
 - 248.1 (covered workers)
- Up to 80 hours of COVID-19 supplemental paid sick leave must be provided for non-food sector covered workers unable to work because they are (1) subject to federal, state, or local quarantine or isolation orders related to COVID-19; (2) advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or (3) prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19. This provision expired 12/31/2020 as FCRA was not extended.
- Requires DFEH to create small-employer (5-19) family leave mediation prg. Sunset 1/1/2024.

Martin & Vanegas, APC | 1/12/2021 | 9

9

**AB 1947:
STATUTE OF
LIMITATIONS
FOR LABOR
CODE
RETALIATION**

- Lengthens from six months to one year the statute of limitations for bringing a claim of discriminatory discharge/retaliation in violation of any law under the jurisdiction of the Labor Commissioner.
- Authorizes a court to award reasonable attorneys' fees to a worker who succeeds on a retaliation claim under section 1102.5.

Martin & Vanegas, APC 1/12/2021 10

10

**AB 1963:
HUMAN
RESOURCES -
MANDATED
CHILD ABUSE
REPORTING**

- Makes the following employees "mandated reporters" under the Child Abuse and Neglect Reporting Act:
 - (1) a human resources employee of a business with five or more employees that employs minors, and
 - (2) for the purposes of reporting sexual abuse, an adult whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace of a business with five or more employees.
- Such persons must be given mandated reporting training, and a written statement describing their obligations.
- A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor.

Martin & Vanegas, APC 1/12/2021 11

11

**AB 2017:
PROTECTED
TIME OFF -
KIN CARE**

- Clarifies that employee has the "sole discretion" to designate when they will use accrued and unused paid sick leave to care for an ill family member.
- Employers can no longer designate the use of paid sick leave for kin care without the employee's consent.

Martin & Vanegas, APC 1/12/2021 12

12

**AB 2043:
CAL-OSHA
COVID-19
AWARENESS**

- Requires Cal-OSHA to disseminate information on best practices for COVID-19 infection prevention in English and Spanish.
- Includes COVID-19 awareness and prevention measures that can be easily understood by agricultural workers from a variety of ethnic and cultural backgrounds.
- Cal-OSHA is also tasked with compiling and reporting findings related to COVID-19 investigations of agricultural workplaces on its website.
- These provisions went into effect on September 28, 2020 and will expire when the state of emergency is terminated by the Governor or the Legislature.

Martin & Yonaga, APC 1/12/2021 13

13

**AB 2143:
PROHIBITION OF
NO-REHIRE
CLAUSES**

- Under current law "no-rehire" clauses are prohibited in settlement agreements resolving employment disputes in which an employee has filed a complaint in court or with a government agency
 - except where the employer has made a good-faith determination that the former employee-complainant engaged in sexual harassment or sexual assault.
- Expands this exception to include employer determinations that the employee engaged in any criminal conduct.
- Requires the employee to have filed the claim in good faith for the prohibition against a "no-rehire" clause to apply.
- Requires that a documented good faith determination of sexual assault, sexual harassment, or criminal conduct be made by the employer before the employee filed the claim.

Martin & Yonaga, APC 1/12/2021 14

14

**AB 2231:
PUBLIC
WORKS**

- Lowers threshold for qualifying as a public works project for purposes of the minimum wage.
- Defines a public subsidy as *de minimis* for the purpose of paying the prevailing wage in private projects if it is both less than \$600,000 and less than 2% of the total project cost for bids advertised or contracts awarded after July 1, 2021.
- If the subsidy is for a residential project consisting entirely of single-family dwellings, the subsidy is *de minimis* so long as it is less than 2% of the total project cost.

Martin & Yonaga, APC 1/12/2021 15

15

AB 2257: MODIFIED ABC TEST FOR INDEPENDENT CONTRACTOR DETERMINATIONS



Modifies AB 5, which had a strict "ABC" test that effectively precluded many industries that traditionally relied on independent contractors from utilizing them, instead requiring that such contractors be classified as employees.



In all, there are now 109 categories of workers exempted from the ABC test in California under AB 2257. Notably absent from the new exemptions are the California trucking industry, the gig economy companies (but don't worry about them, as we shall see), and the motion picture and television industries, among others, despite significant lobbying efforts. B2B contracting was fleshed out with more detail.

Morris & Vanegas, APC
1/12/2021 16

16

AB 2399: FAMILY TEMPORARY DISABILITY INSURANCE

- California Paid Family Leave ("PFL") provides partial wage replacement benefits to individuals who take time off work to care for a seriously ill child, spouse, parent, or domestic partner, or to bond with a new child.
- In 2018, the PFL program was expanded to provide the benefits for time off to be with a family member who was being deployed on active duty in connection with a military exigency.
- AB 2399 expands the definition of "military member" to include a child, spouse, domestic partner, or parent of the employee, where the military member is on covered active duty or is called to active duty in the Armed Forces of the United States.
- The law further provides the new documentation requirement for the leave.

Morris & Vanegas, APC
1/12/2021 17

17

AB 2537: ACUTE CARE HOSPITAL – PPE SUPPLIES

- Requires acute care hospitals to supply PPE to employees who provide direct patient care and ensure that employees use PPE.
- Beginning April 1, 2021, acute care hospitals must maintain a three-month supply of PPE and provide an inventory of PPE to the Division of Occupational Safety and Health upon request.
- Requires an employer to ensure that the employees use the personal protective equipment supplied to them.

Morris & Vanegas, APC
1/12/2021 18

18

**AB 2588:
HEALTH
CARE
WORKER
TRAINING**

- Acute care hospitals must reimburse employer-provided or employer-required training expenses of employees and job applicants, including residencies, orientations, or competency validations.
- Covers employees and applicants in direct patient care settings in general acute hospitals.
- Prohibits employment contracts from requiring training costs be paid back if an employee leaves employment.
- Does not cover costs involving license requirements, registration, or certification necessary to legally practice; or education or training that is voluntarily undertaken by the employee or applicant at their discretion.

Harris & Vengas, APC 1/12/2021 19

19

**AB 2992:
PROTECTED
TIME OFF –
CRIME
VICTIMS**

- Expands leave for victims of domestic violence, sexual assault or stalking to include leave for the victim of any crime that caused physical injury or mental injury with a threat of physical injury.
- Leave protections provided under LC 230 and 230I now apply to victims of any violent crime, and to immediate family members of homicide victims.
- Employees are entitled to the leave "regardless of whether any person is arrested, prosecuted for, or convicted of, committing the crime."
- Allows additional reasonable forms of documentation to verify the crime has occurred.

Harris & Vengas, APC 1/12/2021 20

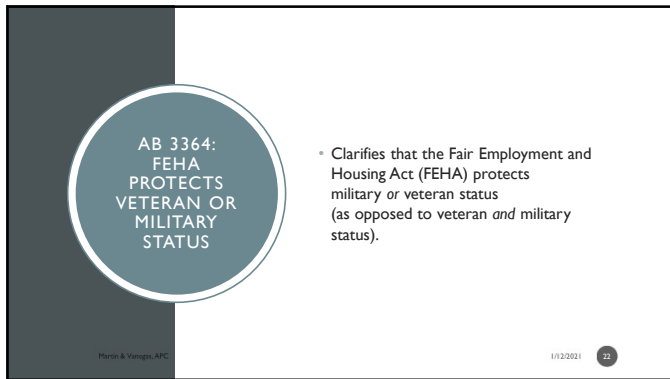
20

**AB 3070: BIAS
ELIMINATION
IN
PEREMPTORY
CHALLENGES**

- Existing law (Batson-Wheeler) prohibits use of a peremptory challenge to remove a prospective juror based on race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation.
- This law codifies this and establishes a presumption that certain reasons for excluding jurors are improper proxies for racial or gender discrimination.
- Requires courts, upon an objection, to evaluate reasons given for a peremptory challenge.
- If court sustains the objection, the court may start a new jury selection, declare a mistrial at the request of the objecting party, seat the challenged juror, or provide another appropriate remedy.
- Effective January 1, 2022 for criminal cases and January 1, 2026 for civil cases.

Harris & Vengas, APC 1/12/2021 21

21

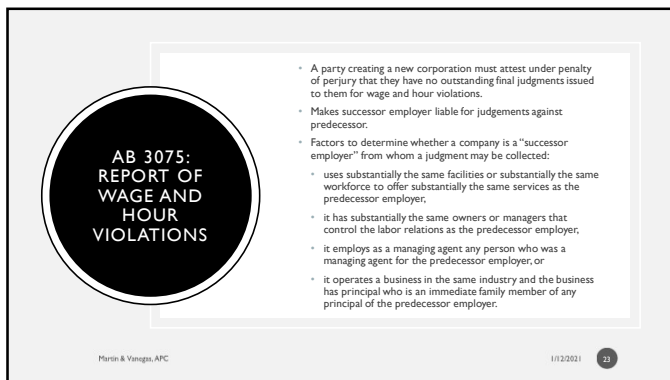


**AB 3364:
FEHA
PROTECTS
VETERAN OR
MILITARY
STATUS**

- Clarifies that the Fair Employment and Housing Act (FEHA) protects military or veteran status (as opposed to veteran and military status).

Plavin & Yanagisawa, APC | 1/12/2021 | 22

22

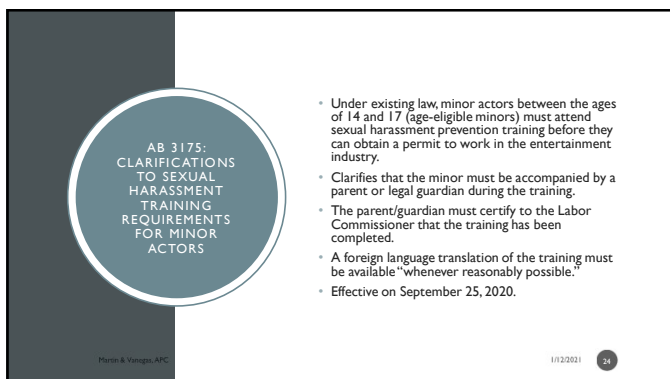


**AB 3075:
REPORT OF
WAGE AND
HOUR
VIOLATIONS**

- A party creating a new corporation must attest under penalty of perjury that they have no outstanding final judgments issued to them for wage and hour violations.
- Makes successor employer liable for judgments against predecessor.
- Factors to determine whether a company is a "successor employer" from whom a judgment may be collected:
 - uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the predecessor employer;
 - it has substantially the same owners or managers that control the labor relations as the predecessor employer;
 - it employs as a managing agent any person who was a managing agent for the predecessor employer; or
 - it operates a business in the same industry and the business has principal who is an immediate family member of any principal of the predecessor employer.

Plavin & Yanagisawa, APC | 1/12/2021 | 23

23



**AB 3175:
CLARIFICATIONS
TO SEXUAL
HARASSMENT
TRAINING
REQUIREMENTS
FOR MINOR
ACTORS**

- Under existing law, minor actors between the ages of 14 and 17 (age-eligible minors) must attend sexual harassment prevention training before they can obtain a permit to work in the entertainment industry.
- Clarifies that the minor must be accompanied by a parent or legal guardian during the training.
- The parent/guardian must certify to the Labor Commissioner that the training has been completed.
- A foreign language translation of the training must be available "whenever reasonably possible."
- Effective on September 25, 2020.

Plavin & Yanagisawa, APC | 1/12/2021 | 24

24

AB 3372:
EMPLOYMENT
TAXES

Permits any notice or document required to terminate, modify, or release an earnings withholding order for taxes to be served by electronic transmission.

Harris & Vengas, APC 1/12/2021 25

25

SB 275:
HEALTHCARE
EMPLOYERS -
PROVISION OF
PPE

Requires specified healthcare employers, beginning January 1, 2023, to maintain an inventory of new and unexpired PPE sufficient to cover 45 days of surge consumption in the event of a declared state of emergency.

Harris & Vengas, APC 1/12/2021 26

26

SB 973: PRO
DATA
REPORTING

- On or before March 31, 2021 & each year thereafter, certain employers must submit to DFEH specified wage information broken down by race, ethnicity and sex, for the prior calendar year.
- Applies only to private employers with 100 or more employees who are required to file a federal EEO-1 report.

Harris & Vengas, APC 1/12/2021 27

27

**SB 1159:
WORKERS'
COMPENSATION
COVID-19
PRESUMPTION**

- Creates a rebuttable presumption that an employee contracted COVID-19 at work if they have tested positive or diagnosed with COVID-19 within 14 days after working at the employee's place of employment.
- The "place of employment" does not include an employee's residence if they are working at home.
- Covers firefighters, workers of the Department of Forestry and Fire Protection, peace officers, and fire and rescue service coordinators, among others.
- For other employees, the law applies only if there is an "outbreak at the employee's specific place of employment."
- An outbreak exists:
 - if specified number of employees test positive for COVID-19:
 - ≤100 employees at a location: **4 employees**
 - 100< employees at a location: **4% of the number of employees who reported** to the specific place of employment.
 - if the specific place of employment is **ordered closed** by a local health dept., Dept. of Public Health, Cal-OSHA, or a school superintendent.

Martin & Vanegas, APC 1/12/2021 28

28

**SB 1383:
CFRA
EXPANSION**

- Expands California Family Rights Act (CFRA) coverage to employers of five or more employees. Expands categories of family members covered by CFRA leaves.
- Until now, 12 weeks of CFRA leave leave was available only to eligible employees who were employed at a location with 50 or more employees within a 75-mile radius.
- New Parent Leave Act (Gov. Code §12945.2) was available for employers of 20-49 employees.
- Retains the eligibility requirements (employees must have had 12 months or more of service and have worked at least 1,250 hours during the previous 12 months to be eligible for CFRA leave). Retains written policy requirement.
- Eliminates "key employee" exception. All eligible employees must be reinstated.
- Repeals the New Parent Leave Act as it became obsolete.

Martin & Vanegas, APC 1/12/2021 29

29

**SB 1384:
REPRESENTATION
OF FINANCIALLY
DISABLED
PERSONS IN
ARBITRATION**

- Labor Commissioner may represent indigent persons when wage claims are referred to arbitration.
- Labor Commissioner representation applies if:
 - Claimant requests it, and
 - Claimant is financially unable to afford representation, and
 - Labor Commissioner determines the claim has merit based on an initial investigation.

Martin & Vanegas, APC 1/12/2021 30

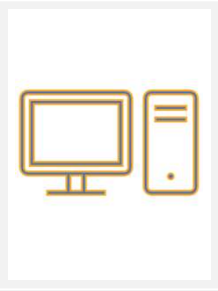
30

PROP. 22: APP-BASED DRIVERS AS CONTRACTORS

- App-based drivers are independent contractors and not employees or agents.
- Override AB 5 as applied to app-based drivers:
 - provide delivery services on an on-demand basis through a business's online-enabled application or platform; or
 - use a personal vehicle to provide prearranged transportation services for compensation via a business's online-enabled application or platform.
- The ballot measure did not affect how AB 5 was applied to other types of workers.
- Requires the enabling business to comply with certain minimum benefits for these "contractors": minimum payments for slow business; limiting time worked to 12 hrs and requiring 6 hours rest; minimum between shifts; specified healthcare subsidies; occupational and accident insurance contributions; short-term disability payments, and accidental death insurance.

Perini & Yangui APC

1/12/2021 31




31

PROPOSITION 24 (APPROVED): EXPANSION OF CONSUMER PRIVACY RIGHTS; EXTENSION OF TEMPORARY EXEMPTION UNDER CCPA FOR HR DATA

- Expands existing consumer privacy rights and creates new rights under CCPA & removes the ability of businesses to fix violations before being penalized.
- Permits consumers to prevent businesses from sharing personal information, to correct inaccurate personal information and to limit businesses' use of "sensitive personal information"—including precise geolocation, race, ethnicity, religion, genetic data, private communications, sexual orientation and specified health information.
- Establishes California Privacy Protection Agency to additionally enforce and implement consumer privacy laws and impose fines.
- Authorizes civil penalties for theft of consumer login information and triples maximum penalties for violations concerning consumers < 16 years old.
- Changes which businesses are required to meet requirements of the CCPA and prohibits businesses from retaining personal information for longer than reasonably necessary.
- Extends the exemption for human resources personal information from many of the CCPA's protections until January 1, 2023. Employers must comply with the CCPA's pre-collection notice requirement.

Perini & Yangui APC

1/12/2021 32



32