NEW CALIFORNIA 2024 EMPLOYMENT LEGISLATION

All laws are effective as of January 1, 2024, unless otherwise noted.

Legislation	Legal Requirements	Implementation
1. California Minimum Wage Increase	• Minimum wage for non-exempt CA employees increases from $15.50/hr to $16.00/hr. • Minimum annual salary for exempt employees increases from $64,480.00 to $66,560.00.	• Increase hourly wages for affected non-exempt employees. • Increase annual salaries for affected exempt employees. • Note: All local minimum wage ordinances must still be followed (if applicable).

2. Paid Sick Leave Expansion (SB 616)	• The minimum required annual up-front (i.e. "lump sum") amount of paid sick leave (and the minimum required annual usage cap) increases from three days (24 hours) to five days (40 hours).
	• If paid sick leave is provided on an accrual basis:
	  ○ the minimum permissible accrual cap increases from six days (48 hours) to ten days (80 hours).
	  ○ the amount of accrued paid sick leave that employees must be permitted to carry over from one year to the next increases from six days (48 hours) to ten days (80 hours).
	• If an alternative accrual method is used to provide paid sick leave (i.e. not one hour of sick leave for every 30 hours worked), employees must accrue a minimum of three days (24 hours) of paid sick leave by their 120th calendar day of employment/each calendar year/each 12-month period, and five days (40 hours) of paid sick leave by their 200th calendar day of employment/each calendar year/each 12-month period.
		• Update the paid sick leave policy in the Company's Employee Handbook.
		• Note: If paid sick leave is provided to employees using the up-front method, the Company may continue to prohibit employees from carrying over any unused sick leave from one year to the next.
		• Note: All local paid sick leave ordinances must still be followed (if applicable).

3. Unpaid Reproductive Loss Leave (SB 848)	• Requires employers to provide covered employees (i.e. employees employed for at least 30 days) with up to five days of unpaid leave following a "reproductive loss event" (as defined by the statute). • Requires employers to provide covered employees who experience multiple reproductive loss events with up to 20 days of unpaid leave (total) within a 12-month period.	• Add a new reproductive loss leave policy to the Company's Employee Handbook (*MSK can provide template if desired*).
4. Workplace Defamation Privilege (AB 933)	• Extends the California Civil Code's definition of a "privileged communication" in defamation actions to include communications made about an individual's own experience of sexual assault, sexual harassment, workplace harassment or discrimination, and cyber sexual bullying.	N/A

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Legislation	Legal Requirements	Implementation
5. **Retaliation Rebuttable Presumption** (SB 731)	• Establishes a rebuttable presumption of retaliation if a job applicant or employee engages in certain protected activities (e.g. filing complaints, participating in investigations, or exercising their rights under various labor law) and is thereafter subjected to an adverse employment action (e.g. discipline or termination) within 90 days of doing so. ○ Once an employee establishes this rebuttable presumption, the burden of proof shifts to the employer to prove that the adverse action was not retaliatory.	• Ensure that managers, supervisors, Human Resources and any other individuals at the Company with disciplinary and termination decision-making authority are made aware of this new law and give careful consideration to the timing of adverse actions that may be taken against employees who recently engaged in protected activities.
6. **Off-Duty Cannabis Use** (SB 700)	• Amends the California Fair Employment and Housing Act (the "FEHA") to make it unlawful for employers to request information from a job applicant relating to the applicant's prior cannabis use (including in the applicant's criminal history), unless doing so is otherwise required by state or federal law.	• Ensure that Human Resources and any other individuals at the Company involved in the hiring process are made aware of this new law.
7. **Off-Duty Cannabis Drug Results** (AB 2188)	• Prohibits employers from discriminating against job applicants and employees in hiring, termination or employment terms and conditions based on: (1) cannabis use during non-work hours; or (2) the results of employer-required drug testing that detects non-psychoactive cannabis.	• Review the drug testing policy in the Company's Employee Handbook and update if necessary. • Ensure that managers, supervisors, Human Resources and any other individuals at the Company with hiring, termination and/or decision-making authority are made aware of this new law. • Note: This law does not allow employees to possess or use cannabis during work hours, nor does it prevent employers from maintaining a drug and alcohol-free workplace.
8. **Non-Compete Agreement Prohibition Expansion** (SB 699)	• Prohibits employers from entering into or attempting to enforce non-compete agreements (which are void under California law) with employees located in California or coming to California, regardless of where and when the non-compete was signed.	• Review the Company's current employee agreements – including its agreements with out-of-state employees – to ensure they do not contain non-compete provisions (or other restrictive covenants that may be implicated (e.g. non-solicitation agreements)).

NEW CALIFORNIA 2024 EMPLOYMENT LEGISLATION

All laws are effective as of January 1, 2024, unless otherwise noted.

Legislation	Legal Requirements	Implementation
9. **Non-Compete Agreement Prohibition Codification** (AB 1076)	• Requires employers to provide written notice by February 14, 2024 informing current and former employees who were hired after January 1, 2022 and who were previously subject to non-compete agreements that such non-competes are now void.	• By February 14, 2024, provide written notice to affected current and former employees who entered into Company non-compete agreements (if applicable) stating that those non-competes are now void.
10. **Wage Theft Notice Amendments** (AB 636)	• Requires employers to update their wage theft notice to include information regarding federal or state emergency or disaster declarations that: (1) apply to the county where an employee will be employed; (2) were issued within 30 days before the employee's first day of employment; and (3) which may affect the employee's health and safety.	• Confirm no recent federal or state emergency or disaster declarations have been issued for the county where a new employee will be employed and use the new, updated Notice recently promulgated by the Labor Commissioner. • If an applicable declaration has been issued within 30 days of a new employee's start date, update the Company's wage theft notice (to be provided on the employee's first day of work).
11. **Workplace Violence Prevention Plan** (SB 553)	• Requires employers to establish a workplace violence plan, either as part of their existing Injury and Illness Prevention Program ("IIPP") plan or as a separate document.	• Although companies are required to adopt a workplace violence IIPP plan by July 1, 2024, Cal-OSHA is expected to issue a model plan prior to this date. Thus, postponing drafting of Company's workplace violence IIPP plan until the model plan is issued may be prudent.

Arbitration Updates

1. Arbitration Agreements' Impact on PAGA Claims After *Adolph*

In *Adolph v. Uber Technologies*, 14 Cal. 5th 1104 (2023), the California Supreme Court held that an employee who is compelled to arbitrate his individual PAGA claims still has standing to pursue his representative PAGA claims in court on behalf of other employees, contrary to what the United States Supreme Court previously suggested.

However, *Adolph* strongly suggested that an arbitration determination that the employee had not suffered any Labor Code violation (and thus is not an "aggrieved employee" under PAGA) would result in a lack of standing to pursue non-individual PAGA claims on behalf of other employees. *Id.* at 1123-24. *Adolph* cited with approval one California Court of Appeal decision that held an arbitration award finding the employee did not suffer any Labor Code violations would be binding. *See Rocha v. U-Haul Co. of California*, 88 Cal. App.5th 65 (2023) (applying issue preclusion to arbitration findings). However, it must be noted that there is not complete agreement as some courts had previously held issue preclusion does not apply to an arbitrator's decision as PAGA claimants are acting in different capacities in arbitration (where they are pursuing individual claims) and court (where they are acting on behalf of the state). *See Gavriiloglou v. Prime Healthcare Mgmt., Inc.*, 83 Cal. App.5th 595, 603 (2022). It thus remains to be seen whether courts will follow *Adolph*'s view that the holdings of the individual PAGA arbitrations are binding on the representative PAGA claims in court, and to what degree.

Additionally, although *Adolph* did not explicitly state that a court must stay the representative PAGA claims pending arbitration of the individual claims, it suggested that such a course may be appropriate, and many courts citing to *Adolph* have suggested the same. *See Merhi v. Lowe's Home Ctr., LLC*, No. 22-cv-545, 2023 WL6798500, at *8 (S.D. Cal. Oct. 13, 2023) (staying the non-individual PAGA claims pending the outcome of the individual arbitration proceedings to prevent re-litigation of any claims in arbitration, including determination of employee's status as an "aggrieved employee"); *Colores v. Ray Moles Farms, Inc.*, No. 1:21-cv-00101, 2023 WL 6215789 at *3 (E.D. Cal. Sept. 25, 2023) ("the proper course of action, as the *Adolph* decision itself indicated, will be to stay this matter until the arbitration concludes, at which time the parties can return to this Court to address any res judicata impact of the arbitrator's decision."); *Rubio v. Marriott Resorts Hospitality Corp.*, No. 8:23-cv-00773, 2023 WL 8153535 at *4 (C.D. Cal. Oct. 17, 2023) ("The Court also adopts *Adolph*'s proposed procedure and STAYS Plaintiff's non-individual PAGA claims pending the result of arbitration."). It is prudent for employers to request that any representative PAGA claims be stayed pending the individual claim's arbitration in order to allow for the opportunity that any favorable arbitration findings be given binding effect in court.

Accordingly, employers should continue to enforce their arbitration agreements against PAGA claims to the maximum degree possible.

2. Courts' Strict Enforcement of New Law Requiring Prompt Payment of Arbitration Fees

In 2023, courts strictly enforced the statute requiring the drafting party of an arbitration agreement to pay the arbitration fees within 30 days of ***receipt of invoice***. *See* Cal. C.C.P. §§ 1281.97, 1281.98; *Doe v. Superior Court*, 95 Cal.App.5th 346, 361-62 (Sept. 8, 2023) (holding that the employer violated the statute where payment was mailed prior to the due date but was not received until two days after the due date). In *Doe*, the Court held that the arbitration provider could not set payment deadlines or dictate the terms of payment, and that only the parties could agree to extend the payment due date. *Id.* at 361; *see also Lee v. Citigroup Corp. Holdings*., No. 22-CV-02718, 2023 WL 6053849 at *2-4 (N.D. Cal. Sept. 14, 2023) (right to arbitrate was waived and termination of arbitration was proper when employer paid the arbitration fees six days after the deadline); *Roman v. Pacific Beach House, LLC*, No. B323162, 2023 WL 4858553 at *7 (Cal. Ct. App. July 31, 2023) (finding that § 1281.97 is a "mandatory statute" and did not permit the court to consider any excusable neglect); *Stokes v. SBS Transport, LLC*, No. 20-cv-02086, 2023 WL 174963 at *2-3 (N.D. Cal. Jan. 12, 2023) (sanctions of $300 arbitration filing fee granted pursuant to § 1281.99).

In order to avoid inadvertently waiving the right to arbitration, employers should act in an abundance of caution and prepare to pay their arbitration fees immediately. Courts have even waived an employer's right to arbitrate when their payment was timely made but was not accepted *due to an electronic error on the arbitrator's website.* In *Waters v. Vroom Inc.*, No. 22-cv-1191, 2023 WL 187577 (S.D. Cal. Jan. 13, 2023), the employer attempted to pay the full amount owed online on the due date but because of an error on AAA's payment platform, only part of the fee was accepted. *Id.* at *2. The employer notified the AAA case administrator of the problem that day by email and it was ultimately resolved five days later. *Id.* The Court denied the employer's motion to compel arbitration due to its late payment of fees and held that "defendants must accept the risk they took by waiting until the last day to try to pay their fees." *Id.* at 4.

Additionally, employers should consider establishing different due dates in their arbitration agreements, as permitted by the statute.

3. Courts May Invalidate an Arbitration Agreement if Another Contract Entered Into as Part of the "Same Transaction" Includes Unconscionable Terms

The validity of arbitration agreements is usually determined based on the terms of the arbitration agreement alone. However, in *Alberto v. Cambrian Homecare*, 91 Cal. App. 5th 482, 490 (Apr. 19, 2023), the Court read both the employer's Arbitration Agreement and Confidentiality Agreement together because they were executed on the same day, were separate aspects of a single primary transaction, and both pertained to resolving disputes between the employee and employer. The Court found multiple unconscionable terms in the Confidentiality Agreement, which supported a finding that the Arbitration Agreement was invalid. *Id.* at 492-495. Employers should scrutinize all agreements provided to the employee along with the arbitration agreement to ensure that no potentially "unconscionable" terms invalidate its rights to arbitration.

4. 2024 Amendment to CA CCP § 1294(a)

Effective January 1, 2024, after the passing of S.B. 365, there is no longer an automatic stay of a litigation when a motion to compel arbitration is denied and that decision is appealed. This means that a California Court may allow litigation to proceed even when it incorrectly denied enforcement of an arbitration agreement. Trial courts will still be able to stay proceedings on a discretionary basis.

Employers should also ensure their arbitration agreements comply with all aspects of California law to give them the greatest chance of success on a motion to compel arbitration. Additionally, adding a provision explicitly stating that the Federal Arbitration Act ("FAA") governs all procedural and substantive aspects of any proceeding related to arbitration may be beneficial because the FAA still requires an automatic stay when an appeal of an order denying arbitration is pending.

Notably, this new law is arguably preempted by the FAA because it discriminates against arbitration. Whether or not courts will find that this new law is preempted by the FAA is something to look out for in 2024.