2024 EMPLOYMENT LAW UPDATE

As 2024 begins, California employers face a variety of new policies and laws that may impact their businesses. The most recent session of the California Legislature resulted in new laws with which California employers must comply in 2024. State and federal courts and federal administrative agencies have also issued decisions that impact California employers. We are pleased to offer an overview of the most significant obligations created by these laws and court decisions as we head into 2024.

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CALIFORNIA STATE LAW UPDATE

California Minimum Wage Increases

Effective January 1, 2024, California's statewide minimum wage increased to $16.00/hour for all employees, regardless of the size of the employer. Keep in mind that this minimum wage increase may also impact certain salaried, exempt employees who must earn an annual salary of at least two (2) times the state minimum wage for full-time employment or $66,560.00.

Effective April 1, 2024, AB 1228 raises the minimum wage for fast food workers to $20.00/hour. Finally, within the health care sector, SB 525 establishes new minimum wage guidelines for certain employees of various types of medical facilities including but not limited to: clinics, home health agencies, and skilled nursing facilities. The newly mandated minimum hourly wage for these employees ranges from $18 to $23.

Compliance tip: In addition to the above noted industry specific requirements, many local jurisdictions require a higher minimum wage, including San Diego, Los Angeles and San Francisco. And with legions of employees continuing to work remotely following the COVID-19 pandemic, employers should review employee information to ensure compliance with local minimum wage.

SB 848: Paid Leave for Reproductive Loss

Effective January 1, 2024, employers must grant eligible employees up to five days of leave following a reproductive loss including miscarriage, failed surrogacy or adoption, and stillbirth. Employees requesting to exercise leave under this section are not required to provide documentation evidencing their need to take leave. Finally, the statute requires employers to maintain employee confidentiality about such requests.

Compliance Tip: Employers should revise their internal leave policies and provide information and training to supervisors and Human Resources personnel regarding this new category of protected leave.

SB 497 Equal Pay and Anti-Retaliation Protection Act

Effective January 1, 2024, SB 497 created a rebuttable presumption in favor of an employee's claim of an adverse employment action (i.e., discharge or other disciplinary action) occurring within ninety days of engaging in a specific protected activity outlined in the California Equal Pay Act and the California Labor Code.

Compliance tip: Employers should carefully review their current policies to confirm that both employee performance evaluations and disciplinary actions are thoroughly documented and that the non-retaliatory reason(s) for disciplinary action is clearly communicated to an employee in a timely manner. Employers should also review SB 497 with those employees who have supervisory responsibilities to confirm that they understand its terms, including what amounts to protected activity and an adverse employment action under the law.

SB 553: Workplace Violence Prevention

Effective July 1, 2024, AB 553 will place new obligations on employers regarding the prevention of workplace violence. The statue defines workplace violence as any act or threat of violence that occurs at a place of employment, regardless of whether actual injury occurs. The new law requires covered employers to establish and implement a Workplace Violence Prevention Plan ("WVPP"). Labor Code Section 6401.9 explicitly sets forth the procedures and topics that must be contained within a WVPP and further requires that the WVPP be in writing and be made available to employees and their authorized representatives. Employers are also required to provide employees with training regarding the applicability and implementation of the employer's WVPP.

SB 553 also imposes additional record-keeping requirements upon covered employers by mandating the creation and retention of violence incident logs, training records, as well as records documenting any workplace violence investigations.

Compliance Tip: In order to ensure compliance with SB 553 by July 1, 2024, employers should begin drafting and developing a plan to effectively implement the WVPP.

SB 700 & AB 2188: Discrimination Related to Cannabis Use

SB 700 prohibits employers from requesting information about a prospective employee's prior marijuana use. Per AB 2188, effective January 1, 2024, employers are prohibited from taking any adverse employment action against an employee (or prospective employee) due to off-duty marijuana use. However, employers are still permitted to request pre-employment drug testing that does not screen for non-psychoactive cannabis metabolites like THC.

We note that AB 2188 will not apply to an employee in the building and construction trades, preempt requirements for federal contracts, or interfere with specified employer rights to maintain a drug and alcohol-free workplace. Neither will the law permit an employee to possess marijuana on workplace premises or be impaired on the job.

Compliance Tip: Employers should carefully review their drug use policies relative to both current and prospective employees.

SB 616: Expansion of Paid Sick Leave

SB 616 expands California's existing paid sick leave law. Beginning January 1, 2024, employers are now required to provide employees with no less than 40 hours of paid sick leave each year. Additionally, employers utilizing the accrual method of calculating sick leave must allow employees to accrue up to 80 hours each year, compared to the prior minimum accrual cap of 48 hours. The new law also expands the number of sick days an employee may roll over from one year to the next, increasing the prior limit of three days to five.

Compliance Tip: California Law previously only required employers to provide 24 hours of sick leave to employees each year. Thus, given the significant implication of SB 616, employers should review and potentially revise their policies around sick leave to ensure compliance.

SB 699 & AB 1076: Noncompete Agreements

In California, noncompete agreements are broadly unenforceable, except under very narrow circumstances in the Business and Professions Code. Two new bills signed into law expand this prohibition.

Effective January 1, 2024, SB 699 prevents employers from enforcing or even entering into noncompete agreements that are not enforceable under state law. The statute creates a private right of action for employees who may seek injunctive relief as well as damages in the event of a violation.

Effective January 1, 2024, AB 1076 requires employers to notify certain employees in writing by February 14, 2024, that their noncompete clauses are void. Applicable employees must have been employed past January 1, 2022 and required to sign a noncompete clause or have contracts that contain such a clause.

Compliance Tip: Employers should review all employees' noncompete clauses, particularly for employees who have worked past January 1, 2022, and seek counsel, if necessary, to determine whether notification is necessary.

CASE LAW UPDATE

Groff v. DeJoy: U.S. Supreme Court Limits Employers' Ability to Deny Religious Accommoda-tions

Under Title VII of the Civil Rights Act of 1964, employers may not discriminate against employees based on religion and must provide employees with religious accommodations, if the accommodation does not impose an undue burden on the employer.

In *Groff v. DeJoy*, the U.S. Supreme Court increased the threshold for an "undue burden" and ruled that an employer may only deny a religious accommodation if it would result in "substantially increased costs in relation to the conduct of its particular business."

Compliance Tip: As a result of the COVID-19 pandemic, employers have received more religious accommodation requests, especially regarding vaccine mandates. Employers should review their religious accommodation request policies with counsel and make sure they comply with the new standard articulated by the U.S. Supreme Court.

***Estrada v. Royalty Carpet Mills, Inc.*: CA Supreme Court to Decide Whether Trial Courts Should Have Power to Strike or Limit PAGA Claims**

By February 2024, the California Supreme Court will rule on the matter of *Estrada v. Royalty Carpet Mills, Inc.*, to resolve a split among courts regarding Private Attorneys General Act (PAGA) claims. The Court is expected to decide whether trial courts may strike or limit unmanageable PAGA claims, which could involve hundreds to thousands of aggrieved employees with unique factual circumstances.

As cases concerning PAGA procedure and jurisprudence have almost always been decided in the plaintiffs' (employees') favor, a decision that allows courts to strike or limit "unmanageable" PAGA claims could profoundly improve employers' abilities to defend such cases, especially where a trial court may limit plaintiffs' presentation of evidence.

***Adolph v. Uber Technologies* CA Supreme Court Rules that Employees May Pursue Representative Claims After Arbitrating Individual Claims**

California courts have long held that PAGA claims can neither be waived nor split into individual and representative claims. In this matter, the California Supreme Court ruled on the issue of standing, or capacity to sue, in PAGA claims and held that employees can pursue their individual PAGA claims in arbitration without losing standing to serve as the plaintiff in the representative PAGA claim in court

Based on the U.S. Supreme Court's 2022 decision in *Viking River Cruises, Inc. v. Moriana*, an employee would not be able to pursue a representative PAGA claim in trial court while their individual claim was being arbitrated, and the representative claim would be dismissed. Now, however, *Adolph* tilts the law back in favor of employees.

Compliance Tip: Employers should be aware that they cannot broadly avoid representative PAGA claims via arbitration agreements. We recommend that employers review their employees' arbitration agreements to ensure that they are up-to-date with current law. Employers may consider inclusion of a mandatory stay clause that requires employees to stay (pause) their representative PAGA claims while their individual claims are arbitrated.

***Raines v. U.S. Healthworks Medical Group*: CA Supreme Court Expands the Scope of FEHA to Apply to Employers' Agents**

In *Raines v. U.S. Healthworks Medical Group*, the California Supreme Court expanded the definition for employers who may be liable for claims under the Fair Employment and Housing Act (FEHA). A business entity acting as an agent for an employer may now be held directly liable for FEHA employment discrimination claims if the agent has at least 5 employees and carries out FEHA-regulated activities for an employer. Examples include agents who assume employment-related activities like pre-employment medical screening or background checks.

Compliance Tip: Employers should exercise caution when delegating employment-related responsibilities to third parties. Business owners of third-party agent-type businesses should review their discrimination and harassment policies to reduce the risk of FEHA liability.

***LaCour v. Marshalls of California LLC:* CA Appellate Court Clarifies that Employers May Face Additional PAGA Litigation Despite Having Settled Similar PAGA Claims**

In this case, a California court considered the situation of whether an employee is precluded from bringing a PAGA claim against their employer after a similar PAGA claim by another employee has already been settled. Typically, the doctrine of claim preclusion prevents the same claim from being litigated again in another lawsuit between the same parties. In *LaCour*, the plaintiff brought a PAGA claim that overlapped another previously-settled PAGA claim.

On appeal, the court found that plaintiff LaCour's PAGA claim could move forward as it was broader than the previously-settled PAGA case but clarified that LaCour could not recover twice for violations that had already been addressed and settled. He could recover only for any newly-asserted labor violations in his own claim.

Compliance Tip: Employers should note that they may face additional PAGA claims even after settling a prior PAGA claims. Individuals must file a pre-suit notice with the Labor and Workforce Development Agency (LWDA) before moving forward with a PAGA claim. It is critical for employers to be aware of the claims brought by employees to the LWDA, as any claim not noticed to the LWDA may be brought later in another employee's PAGA claim.

***Sharp v. S&S Activewear LLC*: 9th Circuit Clarifies that Offensive Music May Contribute to a Hostile Work Environment**

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination or harassment based on sex. Applying this law, the 9th Circuit ruled that playing "sexually graphic, violently misogynistic" music routinely and publicly can foster a hostile work environment that constitutes discrimination and harassment based on sex. The court also concluded that harassment, aural or visual, need not be targeted at a particular employee to permeate through a workplace and give rise to a Title VII claim.

Compliance Tip: Sexual harassment can occur in many forms. Employers should monitor workplaces for images, displays, audio recordings, music, videos, etc. that may contribute to a hostile work environment.

FEDERAL/ADMINISTRATIVE UPDATE

NLRB Final Joint-Employer Rule

Effective February 26, 2024, the National Labor Relations Board's (NLRB) new Final Rule on Joint Employers establishes that two or more entities may be considered joint employers of a group of employees if (1) each entity has an employment relationship with the employees and (2) the entities share or codetermine one or more of the employees' essential terms and conditions of employment.

Compliance Tip: In a joint employment relationship, the primary employer is responsible for the secondary employer's employment liabilities. Although each situation requires a case-by-case factual analysis, this Final Rule may expand liability for employers, especially those in contractor/subcontractor and contractor/staffing agency relationships, for example. Employers should review the practices of their supervisors and managers and train them to avoid actions that might be used to argue that it has direct or indirect control over another entity's employees.

OSHA Final Rule on Workplace Injury and Illness Reporting Requirements

Effective January 1, 2024, the Occupational Safety and Health Administration (OSHA) will require more companies to electronically submit their Injury and Illness logs to OSHA. Such requirements are based on the number of employees and/or the industry of each company. The first compliance date is March 2, 2024.

Compliance Tip: Employers should take note of their employee count and ensure that they are prepared by reviewing their injury and illness logs for the past five years. A company with over 20 employees, depending on industry, may be subject to this rule and should seek employment counsel to determine what compliance, if any, is necessary.

2024 Compliance Recommendations:

What to Do Now

It is important to be aware of changes that may affect your business as non-compliance may result in serious penalties or legal liability. Annual audits, record maintenance, and policy updates are crucial to mitigating any potential exposure to your business.

DDWK is ready to assist your business with employment audits, compliance reviews, and ensuring your employee handbook, agreements, and policies are up to date. Please do not hesitate to contact our employment law attorneys at DDWK. We are here to help.