



2021 CALIFORNIA EMPLOYER COMPLIANCE CHECKLIST

By Dunn DeSantis Walt & Kendrick

2020 presented California employers with **unprecedented challenges** including an onslaught of fast-moving protocols and obligations arising from the **COVID-19** pandemic. **2021** will bring **new challenges**, some but not all of which are tied to the pandemic.

With ongoing stay-at-home and other public health instructions, supplemental sick leave laws, federal COVID-19 paid sick leave obligations, and other changes including new, non-COVID-19 enactments of the California legislature set to take effect in 2021, **the path to compliance in the new year is daunting.**

Dunn DeSantis Walt & Kendrick is here to help.

Now is the time to recognize the challenges faced by your business and refine your employment risk management strategies. We have created this **checklist** to assist with **workplace compliance** considerations on the 2021 horizon.

CALIFORNIA MINIMUM WAGE INCREASES

In California, there are many minimum wage requirements. They depend on worker location and employer size. However, effective January 1, 2021, statewide California minimum wages increase as follows:

- 25 employees or less - \$13.00/hr.
- 26 employees or more - \$14.00/hr.
- Salaried, exempt employees must earn an annual salary of at least two (2) times state minimum wage.

Compliance tip: With more employees working remotely due to COVID-19 stay-at-home orders, employers should review employee information to ensure compliance with local minimum wage.

Also, keep in mind that *local* and *higher* minimum wage ordinances may apply, including in San Diego and Los Angeles.

For companies with employees who travel around the state, or who work in multiple offices – or work *remotely* – the risks can be different. Compliance strategies should be carefully developed because minimum wage violations regularly trigger litigation.

CALIFORNIA SEXUAL HARASSMENT TRAINING DEADLINE IS JANUARY 1, 2021

In California, employers with 5 or more employees must provide sexual harassment prevention training to all employees by January 1, 2021.

- Non-supervisory employees must receive 1 hour of training.
- Supervisory employees must receive 2 hours of training.
- Generally, new hires must complete this training within 6 months of hire.

Compliance tip: The DFEH has issued an e-training module that can be accessed [here](#).

SB 973:

**PAY DATA
REPORTING
REQUIREMENT**

Private California employers with 100 or more employees must submit a pay data report to the Department of Fair Employment and Housing (DFEH). The deadline to report is March 31, 2021. The report must contain information about employee race, ethnicity and gender in various job categories. This reporting requirement becomes annual starting immediately.

Compliance tip: The DFEH has indicated that it intends to issue standard forms for employers to submit their pay data reports. Further guidance from the DFEH can be found [here](#). [Contact DDWK](#) to discuss your reporting obligations and related strategies.

SB 1383:

**CALIFORNIA FAMILY
RIGHTS ACT (CFRA)
EXPANSION**

The California Family Rights Act (CFRA) requires covered employers to provide up to 12 weeks of unpaid family and medical leave during a 12-month period. SB 1383 significantly expands CFRA requirements and offerings and takes effect on January 1, 2021.

Under SB 1383, CFRA requirements now apply to California employers with 5 or more employees (working anywhere in the United States) and provides eligible employees with up to 12 weeks of **protected** family care leave, albeit unpaid. The new law expands the list of family members for whom family care leave may be taken as well as the reasons for taking family care leave.

Compliance tip: All California employers, large and small, should begin to prepare to comply with the new CFRA by revising employee handbooks, personnel policies, leave of absence request forms, and other leave of absence documents to comply with the new provisions.

AB 685:

**NOTICE TO
EMPLOYEES OF
POTENTIAL COVID-
19 EXPOSURE AND
LOCAL HEALTH
DEPARTMENT
NOTICE
REQUIREMENTS**

AB 685 includes employee notice requirements in the event of a COVID-19 exposure in the workplace, as well as COVID-19 public health reporting requirements. The law takes effect on January 1, 2021 and will expire in two years on January 1, 2023.

Under AB 685, when an employer receives a notice of potential exposure to COVID-19, the employer must provide written notice *within one business day* to all employees and subcontracted employee who were on the premises at the same worksite within the “infectious period.” The notice must contain information about COVID-19 related benefits the employee is entitled to under federal, state, and local laws, along with the employer’s disinfection and safety plan. Employers are required to keep a copy of all notices provided to employees for three years. [Contact DDWK](#) to discuss how to respond to COVID-19 exposure in your workplace.

Under the new AB 685 law, if an employer is notified of a number of COVID-19 cases that meet the definition of a COVID-19 outbreak, as defined by the California Department of Public Health (CDPH), the employer has 48 hours to notify the local public health agency.

- As of the time of publication, the CDPH defined an “outbreak” as 3 or more lab-confirmed cases of COVID-19 among workers who live in different households within a 2-week period. This definition may be revised.

Compliance tip: Local public health COVID-19 reporting requirements may be more stringent than the CDPH. Always check your local public health COVID-19 reporting requirements for compliance purposes. [Contact DDWK](#) with questions.

SB 1159:

**WORKERS’
COMPENSATION
COVID-19
PRESUMPTION AND
COVERED WORKERS**

SB 1159 codifies the COVID-19 workers’ compensation presumption created by Executive Order N-62-20 and provides two new rebuttable presumptions that an employee’s COVID-19 illness is an occupational injury, if certain criteria are met. The law takes effect immediately (September 17, 2020) and expires on January 1, 2023.

SB 1159 imposes a presumption that an employee who contracts COVID-19 did so at work if they have tested positive or are diagnosed with COVID-19 within 14 days after a day that the employee worked at their place of employment. Importantly, “Place of employment” does not include an employee’s residence if they are working from home.

Also, SB 1159 creates an “outbreak” presumption for employers with 5 or more employees. The statute specifically defines an “outbreak” as any of the following:

- Employers with 100 employees or less at a specific worksite – if 4 employees test positive for COVID-19 within 2 weeks.
- Employers with more than 100 employees at a specific worksite – if 4% of employees test positive for COVID-19 within 2 weeks.
- If public authorities order the place of employment closed due to a risk of COVID-19 infection.

For employers with 5 or more employees, any positive COVID-19 case must be reported to the employer’s workers’ comp claims administrator within 3 business days of knowing (or having reason to know) that an employee has tested positive.

Compliance tip: Legal definitions and reporting obligations differ between SB 1159 and AB 685, above. Make sure your business can demonstrate compliance with both sets of laws.

AB 2017:

**KIN CARE
DESIGNATION**

California employees can use up to half of their accrued paid sick leave to care for a family member (“kin care”). AB 2017 requires that, after January 1, 2021, when requesting to use paid sick leave, an employee has the right to designate sick leave as kin care to avoid usage of kin care time when sick leave time was actually taken for personal sick leave.

Compliance tip: Make sure your employee handbook reflects this new right to designate kin care leave. [Contact DDWK](#) with questions.

AB 2992:

**CRIME VICTIMS
LEAVE**

Labor Code section 230.1 required employers with 25 or more employees to allow an employee who was a victim of domestic violence, sexual assault, and/or stalking to take time off to seek medical attention or related services. AB 2992 expands the prohibition on discrimination and retaliation against employees who are victims of **crime or abuse** when they take time off for certain related reasons, effective January 1, 2021.

Compliance tip: Revise employee handbooks to reflect the expanded categories for qualifying leave and eligibility documentation. [Contact DDWK](#) with questions.

**CAL/OSHA COVID-19
PREVENTION PLAN
(CPP)**

On November 30, 2020, California’s Office of Administrative Law approved Cal/OSHA’s emergency COVID-19 regulations, making them effective immediately. The new regulations are related to **workplace** exposures and infections and require most California employers to establish, implement, and maintain a written COVID-19 Prevention Plan (CPP), including specific protocols for employee paid leave and exclusion pay, company paid COVID-19 testing, and reporting requirements.

Compliance tip: Although Cal/OSHA has provided a [model CPP template](#), employers must ensure that their CPP is narrowly tailored to the specific business and industry.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH QUARANTINE GUIDANCE

On December 14th, the California Department of Public Health (CDPH) released its own COVID-19 Quarantine Guidance [here](#). The CDPH follows suggestions from the CDC in reducing the length of quarantine for asymptomatic individuals who have been in close contact with an infected person (within 6 feet for a cumulative total of 15 minutes or more). These individuals may discontinue quarantine after 10 days of self-quarantine, with or without testing.

Governor Newsom also issued an Executive Order, N-84-20, which limits required quarantine periods under Cal/OSHA's COVID-19 regulations to either the CDPH guidance or local public health standards, **whichever is longer**.

Compliance tip: Before implementing CDPH quarantine guidance, review applicable local public health orders to determine which quarantine period applies to your business, including for Cal/OSHA purposes. [Contact DDWK](#) for further assistance.

2021 COMPLIANCE RECOMMENDATIONS: WHAT TO DO NOW

As you can see, the regulatory burden on California employers is heavier than ever. Many of these laws affect nearly every size employer in the state. Do not delay updates to your employee handbook and related materials or risk fines, penalties, and even a potential closure of your business.

With changes to the CFRA and new Cal/OSHA COVID-19 regulations, the bottom line for California employers is this: an annual audit of employment materials is more crucial than ever. As well, employee handbooks and policies need to be updated at least annually.

DDWK is ready to assist your business with employment audits, compliance reviews, and preparing COVID-19 related materials. Don't hesitate to reach out. We're here to help.