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CALIFORNIA HR LEGISLATIVE UPDATE 2021



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CorpStrat HR Legislative Update California 2021

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CorpStrat HR Legislative Update

California 2021



NEW REPORTING REQUIREMENTS FOR COVID-19 EFFECTIVE JANUARY 1, 2021

- AB 685 – When an employee(s) contracts the virus, ER must take action steps including notifying affected EEs within 1 business day of becoming aware of potential exposure. Actions/Notice include:
 - Determine who was at the worksite (including third parties) during infectious period
 - Written notice to:
 - Potentially exposed employees,
 - Their exclusive representative (if any), and
 - The employers of any exposed subcontracted employees
- Notice of potential exposure may come to an employer from:
 - Employee,
 - Employee’s representative,
 - Employee’s emergency contact,
 - Testing protocol, or
 - Employer of a subcontracted employee that was on the worksite.
- Notice must be sent out within 1 business day of ER becoming aware of potential exposure. (maintain notice for 3 years)

NEW REPORTING REQUIREMENTS FOR C-19 Breakout

- C-19 breakout = 3 > EE who are not from the same household, at the same worksite, test positive within a 14-day period.
 - Time frame to notify LHD = 48 hours
 - Information to be reported includes:
 - EE that tested positive,
 - EE was diagnosed with COVID-19 by a licensed healthcare provider,
 - EE was ordered by a public health official to isolate due to COVID-19, or
 - Employee fatalities due to COVID-19
 - Worksite's NAICS number
 - Name of EE
 - Employee number
 - Address of business
 - Location of worksite
 - ER has ongoing responsibility to notify LHD of any further laboratory confirmed C-Cases.

NEW REPORTING REQUIREMENTS FOR C-19 Breakout

Cal-OSHA Imminent Hazard & Serious Violation Reporting

- “Imminent Hazard” – when Cal-OSHA declares an ER to be an imminent hazard it can shut the entire employer or affected worksite.
 - Posting a notice to the employer in a conspicuous place.
- Serious Violation – Cal-OSHA can issue serious violation without advance notice to any ER where an EE tests positive.

COVID-19 PRESUMPTIONS OF WORKERS' COMPENSATION COMPENSABILITY - SB 1159

- Any EE may file a WC claim for COVID-19 with causation to be determined in due course. However, SB 1159 creates a new presumption of compensability for two classes of EEs:
 1. First responders and healthcare workers (LC §3212.87) who test + for COVID-19 w/in 14 days of a workday occurring at a worksite that is not their home.
 2. Employees:
 - a) whose ERs have five > EEs;
 - b) who test + w/in 14 days of a workday occurring at a worksite that is not their home (unless a caregiver); and
 - c) who test + during an “outbreak” at their workplace.

COVID-19 PRESUMPTIONS OF WORKERS' COMPENSATION COMPENSABILITY - NOTICE



- Notice under SB 1159 - ERs with 5 > EEs must notify their claims administrators w/in 3 business days when they know, or reasonably should know, that an EE has tested positive.
- Notice must include:
 - Date of the positive test,
 - The address of the EE's place of employment during the 14-day period preceding the test, and
 - The highest number of EEs who worked at the EE's place of employment in the 45 days preceding the last day the EE worked at each location.

AB 5 IN THE AFTERMATH OF AB 2257 & PROP 22

- AB 2257 repealed LC §2750.3 (AB 5) and codified sections 2775-85 of the LC. However, the core of AB 5 remains unchanged. The “ABC” test still applies when determining worker classification unless there is an exemption, in which case the Borello test should be used.
- AB 2257 changes include:
 - (1) modifying and clarifying the business-to-business, referral agency, and professional services exemptions set forth in AB 5; and
 - (2) exempting additional occupations and business relationships.

AB 5 IN THE AFTERMATH OF AB 2257

- Amended and new exemptions under AB 2257 include:
 - *B2B exemption now applies to a “public agency or quasi-public corporation” that has retained an independent contractor.
 - “Single-Engagement” Business-To-Business Exemption
 - Entertainment/Music Industry Exemptions: These include:
 1. Recording artists, songwriters, lyricists, composers, and proofers; managers, record producers and directors; engineers, mixers, and musicians engaged in creation of sound recordings; vocalists; and independent radio promoters. *Film/TV production and others not exempt.

**3 NEW
EXEMPTIONS
FOR AB 5**

MORE
EXEMPTIONS
AB 2257

- More exemptions under AB 2257 include:
 - Referral Agency: This existing exemption has been expanded by adding services such as: consulting, youth sports coaching, caddying, wedding or event planning, services provided by wedding and event vendors, and interpreting services, and others.
 - Professional Services: this existing exemption has been expanded with respect to still photographers, photojournalists, freelance writers, editors and newspaper cartoonists who had more than 35 submissions in a year.
 - *District Attorney can issue injunction for misclassification.

PROPOSITION 22

- App Based Transportation Companies
 - Definition includes drivers who:
 - a) Provide delivery services on an on-demand basis through a business's online enabled application or platform or
 - b) Use a personal vehicle to provide prearranged transportation services for compensation via a business's online-enabled application or platform.
 - Specific labor policies apply to these workers:
 1. Minimum compensation levels.
 2. Health insurance subsidies.
 3. Medical costs for on-the-job injuries.
 4. Prohibits drivers from working more than 12 hours in a 24-hour period unless the driver has been logged off for 6 uninterrupted hours.
 5. Companies must develop anti sexual harassment and anti-discrimination policies.
 1. Including how to report sexual assault and other misconduct.
 6. Companies must develop training programs related to driving, traffic, accident avoidance.
 7. Zero tolerance for DUI.
 8. Mandatory criminal background checks for drivers.

CFRA EXPANDED TO SMALLER EMPLOYERS (SB 1383)

- ERs with 5+ must comply with the CFRA.
- Eliminates the employee count within a 75-mile radius.
- Law provides covered employees with 12 weeks of unpaid leave within a 12-month period for the following:
 1. *To bond with a new child (birth, adoption or foster care placement) of the employee, or
 2. To care for themselves or a family member with a SHD.
 - i. **Family member includes child, parent, grandparent, sibling, spouse, or domestic partner.



CCP §1002.5's No-Rehire provisions amended (AB 2143)

- §1002.5 enacted 1-1-20, prevented *settlement agreements from including no-rehire provisions, with one exception, good faith finding of sexual harassment/assault.
- AB 2143 amendments:
 1. To meet the sexual harassment/assault exception the ER must have made “and documented” a good faith determination BEFORE the EE filed the claim, that the EE engaged in sexual harassment or sexual assault.
 2. Expands exception to no-hire provision to include a good faith finding by the ER of “any criminal conduct” on the part of the individual.
 3. The no-hire provision does not apply if any claim filed by the EE was not done in good faith.

DIVERSITY FOR BOARDS OF DIRECTORS (AB 979)

- Publicly held domestic or foreign corporations with principle executive offices in CA must have a minimum number of directors from underrepresented communities.
 - *Director from an underrepresented community = one identifying as:
 - Black
 - African American
 - Hispanic
 - Latino
 - Asian
 - Pacific Islander
 - Native American, Native Hawaiian, Alaska Native
 - Gay
 - Lesbian
 - Bisexual or transgender
 - Publicly held Corp. = Corp. with outstanding shares listed on a major US stock exchange.
 - Must meet these requirements as follows:
 - 12-31-21 at least one director from an underrepresented community.
 - 12-31-22 (i) corps with 5-8 directors must have at least two; and (ii) nine+ directors must have at least 3.
 - Failure to comply = fines up to \$100,000.00 for 1st violation and it goes up from there.

DLSE COMPLAINTS & WHISTLEBLOWERS (AB 1947)

- *LC §98.7 revised to increase time to file a complaint with DLSE from 6 to 12 months and allow attorneys' fees for plaintiffs who bring successful claims under LC §1102.5 (whistleblowers).
- **LC §1102.5 prohibits whistleblower retaliation.
- LC §1105 allows for significant penalties including constituting a misdemeanor and civil penalties of \$10,000.00 for each violation (LC §1102.5(f)).
 - AB 1947 now permits attorneys' fees under newly created LC §1102.5(j).

EXPANDED SUCCESSOR LIABILITY FOR WAGE AND HOUR JUDGMENTS (AB 3075)

- *Creates LC §200.3 providing that a successor to a judgment debtor will be liable for any wage damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment after time for appeal has expired.
- Successor entity is defined as:
 1. Uses substantially the same facilities or substantially the same workforce to offer substantially the same services;
 2. Has substantially the same owners or managers that control the labor relations;
 3. Employs as managing agent any person who directly controlled the wages, hours or working conditions of the affected workforce; and
 4. Operates a business in the same industry as the judgment debtor and the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor.
- 1-1-22, certain businesses must now certify in the Statement of Info, whether any officer, director, or member or manager of an LLC has an outstanding final judgment in any court or issued by DLSE.

NEW PAY DATA REPORTING (SB 973)

- ERs with 100 > EEs who are required to file EEO-1, must collect and submit compensation data to the DFEH on the following:
 1. *Same as EEO-1, and
 2. Number of EEs by race, ethnicity, and gender whose annual earnings fall w/in each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey, which range from a low of < \$19,239 to a high of >\$208,000 based on W-2 wages.
 1. Report must include total number of hours worked by each EE in each pay band during the reporting year.
 2. ERs with multiple establishments must submit a consolidated report for all EEs and a separate report for each establishment.
- DFEH will create forms for ERs as well as a submission portal,
- DFEH can order compliance and recover costs associated with seeking the order.
- ERs must submit reports to the DFEH on or before 3-31-21.



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