



Insights: Alerts

Recent Statutory Developments in California Employment Law

October 2, 2024

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The California state legislature recently enacted several laws that impact the relationship between employers and their respective work forces. The below is a quick update on these recent changes to the California employment law landscape.

California Follows Illinois, Passes Law Limiting 'Captive Audience' Meetings

On July 31, 2024, [as previously reported](#) on by Kilpatrick's Labor and Employment team, Illinois passed the Worker Freedom of Speech Act (the "Illinois Act") prohibiting employers from using "captive audience" meetings with employees to discuss an employer's position on religious or political matters, including union representation and the right to opt out of union membership. California was quick to follow. On September 27, 2024, California Governor Gavin Newsom signed SB-399, the "California Worker Freedom from Employer Intimidation Act" (the "California Act").

Similar to the Illinois Act, the California Act prohibits employers from discharging, discriminating or retaliating against, or otherwise taking any adverse action against, an employee for declining to attend an employer-sponsored meeting about religious or political matters or for declining to participate in, receive or listen to communications from the employer regarding such matters. Like the Illinois Act, the California Act defines "political matters" broadly and is likely to be challenged on first amendment grounds.

Freelance Worker Protection Act

On September 28, 2024, California Governor Gavin Newsom signed SB 988, the "Freelance Worker Protection Act," which requires most agreements with freelance workers to be in writing. The Act does not apply to individuals hiring services for their personal or household benefit. The Act will apply to contracts executed or renewed on or after January 1, 2025.

The Act defines a "freelance worker" as a bona fide independent contractor who is hired to provide professional services in exchange for \$250.00 or more (either at once or when aggregated over a 120-day period). Thus, it is critical to recognize that due to the low threshold value, the Act will apply to most engagements for services. It is also critical to recognize that the Act applies only to contracts for professional services, which is defined in Section 2778 of the California Labor Code and applies mainly to creative professionals (such as graphic designers, marketing professionals, photographers, writers, and estheticians) provided they meet the criteria for classification as an independent contractor.

Contracts must include the following information:

- (1) The name and mailing address of each party.
- (2) An itemized list of all services to be provided by the freelance worker, including the value of those services and the rate and method of compensation.
- (3) The date by which payment to the freelance workers is due, or a mechanism for determining that date.
- (4) The date by which a freelance worker must submit a list of services rendered to the hiring party, to enable the hiring party to process the freelance worker's payment on time.

The Act further provides that a waiver of any part of the act is contrary to public policy and will be unenforceable. The hiring party may not take adverse action against a freelance worker for exercising their rights under the Act.

While many businesses already execute written agreements with independent contractors as a best practice, the Act specifies particular damages for a hiring party's failure to comply with the Act's requirements. An aggrieved freelance worker may bring a civil action to recover injunctive relief, reasonable attorneys' fees, costs, and statutory damages. If the worker requests a written contract prior to commencing work and the hiring party refuses, the worker shall be awarded \$1,000.00. If the hiring party fails to pay the worker by the time payment is due, the worker shall be awarded damages up to twice the amount owed. If the worker requested a contract and the hiring party refused, the amount due shall be the rate that the worker reasonably understood to apply. Finally, if the hiring party violates any other part of the Act, the freelance worker may be awarded damages equal to the value of the contract or the work performed, whichever is greater.

Businesses should review their internal processes to ensure that those with authority to hire freelance workers understand the new requirements under the Freelance Worker Protection Act and are executing written contracts with workers as required. Because contractor classification under California law can also be a complex analysis, businesses should consult with counsel when considering whether or not to engage workers as independent contractors.

California Amends Victim of Violence Leave Protections

On September 29, 2024, Governor Gavin Newsom signed Assembly Bill (AB) 2499, expanding the list of crimes for which employees can take time off and allowing employees to take protected time off to assist family members who are victims of specified crimes. The new law also permits the use of paid sick leave for these purposes.

Prior to AB 2499, California law provided protections to employees from discrimination or retaliation for taking time off for jury duty and court appearances, or to employees who were victims of crime or abuse.

Under AB 2499, these protections remain in place, but broaden the definition of "victims" to include a victim of a

“qualifying act of violence,” which means any of the following, regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime:

- Domestic violence
- Sexual assault
- Stalking
- An act, conduct, or pattern of conduct that includes:
 - An individual causes bodily injury or death to another, or
 - An individual exhibits, draws, brandishes, or uses a firearm or other dangerous weapon, with respect to another, or
 - An individual uses or makes a reasonably perceived or actual threat of use of force against another to cause physical injury or death.

In addition, AB 2499 moves the jury, court, and victim time off provisions from the Labor Code (formerly Labor Code Sections 230 and 230.1) as unlawful employment practices within the California Fair Employment and Housing Act (Government Code Section 12945.8) and, with it, moves the enforcement authority from the California Division of Labor Standards Enforcement to the California Civil Rights Department.

Additionally, the law removes the threshold of 25 or more employees from the provisions for victims of crime or abuse, and now requires all employers with at least one employee to comply, with certain provided exceptions. Employers with 5 or more employees must not discriminate or retaliate against an employee who is a victim or has a family member who is a victim from taking time off from work for additional reasons beyond obtaining relief or attempting to obtain relief (temporary restraining order, restraining order, or other injunctive relief) to ensure the health, safety, or welfare of the victim or family member of the victim.

Under AB 2499, employees are permitted to use vacation, personal leave, paid sick leave, or compensatory time off that is available unless otherwise provided in a collective bargaining agreement.

Finally, under the law, employers will be required to provide written notice of their rights established under this bill to new hires, to all employees annually, at any time upon request, and any time the employer becomes newly aware that an employee or an employee's family member is a victim. This bill takes effect January 1, 2025.

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