MUNGER TOLLES & OLSON LLP

CLIENT ALERT

New Employment Laws Taking Effect January 1, 2026

Starting on January 1, 2026, several new California employment laws will take effect, including significant changes to California law regarding bonuses paid at the outset of employment and additional workplace protections for employees when interacting with immigration agencies or law enforcement agencies in the workplace.

More information on the new employment laws is available below. This alert covers developments that will affect all or most California employers, but additional laws will impact specific industries and situations. Please reach out to Katherine M. Forster, Margaret G. Maraschino and David Moreshead of Munger, Tolles & Olson for more information.

New California Employment Laws

Minimum Wage Increases Effective January 1, 2026

- California state minimum wage will increase to $16.90 per hour and the salary minimum for California exempt-status employees will increase to $70,304 annually.
- The minimum hourly rate of pay for a computer software employee to qualify as exempt from overtime is $58.85 per hour, or $122,573.13 annually.
- The minimum hourly rate of pay for certain licensed physicians and surgeons to qualify as exempt from overtime is $107.17 per hour.

Ban on "Stay or Pay" Clauses: AB 692 continues California's focus on banning employment contracts that place a restraint on trade. Beginning January 1, 2026, workers cannot enter into employment contracts or agreements which require the worker to repay the employer for any debt—including a signing or relocation bonus—upon separation of employment, unless the contract falls under one of the five statutory exceptions. For most employers, the most relevant exception will be the one that permits repayment requirements for signing bonuses or other financial incentives given in connection with hiring *if* the following conditions are met: (1) the terms of the repayment obligation are set forth in a separate agreement; (2) the employee is informed of the right to consult with an attorney regarding the agreement and is given at least five business days to do so; (3) the term of the repayment obligation is no longer than two years from the receipt of payment; (4) the repayment obligation is not subject to interest; (5) the repayment amount is prorated based on the employee's term of employment prior to separation; (6) the employee is provided with the option to defer receipt of the payment until the end of the repayment obligation term; and (7) the separation of employment is either the employee's choice or due to misconduct.

The other four exceptions deal with repayment obligations for government loan assistance or repayment programs, tuition assistance, enrollment in apprenticeship programs, and contracts related to the lease, finance, or purchase or residential real estate.

Employers will need to review the agreements given to employees to sign in connection with signing bonuses to ensure compliance with AB 692 or risk facing penalties: Any contract or contract term that violates AB 692 is void as contrary to public policy and the worker may bring a civil action under the Business and Professions Code on behalf of themselves, or others similarly situated, and recover actual damages or $5,000 per worker (whichever is greater), injunctive relief, and reasonable attorney's fees and costs. Because the statute permits an individual to bring an action on behalf of themselves *or* other persons similarly situated (or both), it is possible that workers will be able to bring representative-only actions that cannot be compelled to individual arbitration.

Preservation of Training Records: SB 513 expands employer recordkeeping obligations under Labor Code section 1198.5 to include education and training records. Employers must retain education and training records, which should include the names of the employee and training provider, duration and date of the training, the core competencies of a training (such as any skills in equipment or software obtained in the training), and the resulting certification or qualification. Because of this change, an employer must include education and training records as part of the employee's personnel file when requested under section 1198.5.

The Workplace Know Your Rights Act: SB 294 establishes the Workplace Know Your Rights Act, which requires employers to provide a standalone written notice to each new hire and current employee of certain workers' rights, new legal developments deemed material and necessary by the Labor Commissioner, and a list of enforcement agencies that may enforce the underlying rights in the notice. The Labor Commissioner will develop a template notice which must be provided to current employees beginning on or before February 1, 2026, and annually on a going-forward basis, in addition to being provided to employees upon hire. The notices must be provided in the language the employer normally uses to communicate with the employee and can be distributed in the way that the employer typically distributes employment-related information. Employers must keep a record of compliance with the notice requirement for three years, including the date each written notice was provided to employees.

SB 294 also establishes new circumstances when employers are required to contact an employee's designated emergency contact. If an employee has notified their employer that they want the employer to contact the employee's designated emergency contact in the event that the employee is detained or arrested, the employer must contact the designated emergency contact in the event the employee is detained or arrested (1) at the workplace, or (2) during work hours or during the performance of the employee's job duties, even if not at the workplace, if the employer has actual knowledge of the arrest or detention. Failure to properly notify an employee's emergency contact (if requested by the employee) can result in a penalty of up to $500 per employee per day up to a maximum of $10,000.00 per employee.

Employers may not discriminate or retaliate against an employee for exercising or attempting to exercise their rights under SB 294. The Labor Commissioner, a public prosecutor, or the employee (in a civil action) may enforce the Workplace Know your Rights Act, and the employee may obtain injunctive relief, penalties, punitive damages, and reasonable attorneys' fees and costs.

Amendment to Equal Pay Act: SB 642 revises several components of the Equal Pay Act. The definition of pay scale has been amended so that job postings must include "*a good faith estimate of* the salary or hourly wage range that the employer reasonably expects to pay for the position *upon hire*" (new language in italics).

SB 642 also adds definitions for "sex," "wages," and "wage rate" to Labor Code 1197.5, which prohibits employers from paying employees who perform substantially similar work differently based on the employee's sex. The new definitions clarify that "wages" and "wage rate" include *all* forms of pay, including but not limited to salary, overtime pay, bonuses, stock or stock options, profit sharing and bonus plans, vacation and holiday pay, and other benefits. Employers will now have to ensure that employees who perform substantially similar work are not paid differently *and* are not entitled to different benefits on the basis of sex. The Act's language regarding equal pay for substantially similar work has also been amended to apply to employees of "*another* sex," (instead of the "*opposite* sex"), making the language inclusive of non-binary people.

Finally, SB 642 makes a number of changes that apply to civil actions for violation of the Equal Pay Act. Notably, the statute of limitations has been expanded from two to three years, and employees may also obtain relief for the entire period that the violation existed up to a maximum of six years. SB 642 also adds language specifically outlining that a cause of action for violation of the Act occurs when: (1) an alleged unlawful compensation decision or other practice is adopted; (2) an individual becomes subject to an alleged unlawful compensation decision or other practice; or (3) when an individual is affected by the application of an alleged unlawful compensation decision or other practice.

Update to WARN Notice Requirements: Under SB 617, employers who are required to provide a Worker Adjustment and Retraining Notification ("WARN notice") now must also include in the notice whether the employer is planning to coordinate support services for the affected employees (such as a rapid response orientation to provide information to employees about available resources) through the local workforce development board or another entity, or whether the employer is not planning to coordinate support services with any entity. Regardless of whether the employer is choosing to coordinate support services or not, the employer must provide contact information for the local workforce development board and a specific description of the rapid response activities offered by the local workforce development board for employees affected by a layoff. If the employer chooses to coordinate support services, then the employer must do so within 30 days of the notice. SB 617 also requires that the WARN notice include a description of CalFresh (the statewide food assistance program), as well as the CalFresh benefits hotline, a link to the CalFresh website, and a functioning email and telephone number for the employer.

Revisions to the Fair Employment and Housing Act: SB 477 updates the Fair Employment and Housing Act by adding the defined term "group or class complaint" which means "any complaint alleging a pattern or practice"; outlining the timing for the issuance of a right to sue letter when a complaint relates to a group or class complaint; and adding a number of additional bases for tolling the statute of limitations for civil actions to be filed.

Revisions to Victim Protection: AB 406: Last year, the California Legislature made sweeping changes to the employment protections provided to victims of violence in AB 2499 and this year, AB 406 further legislates those protections.

Under AB 406 an employee may (but is not required to) use vacation, personal leave, paid sick leave or other paid leave when the employee or their family member is a victim of certain crimes and the employee takes time off from work to attend judicial proceedings related to that crime. The employer may not discharge, discriminate, or retaliate against an employee for taking time off for these reasons. In this context, a "victim" is either (1) a person who was subject to a violent felony, a serious felony, felony theft or embezzlement; or (2) a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of certain violent crimes.

AB 406 also makes changes to the use of paid leave for purposes of jury duty or appearing in court as a witness. Effective October 1, 2025, employees may (but are not required to) use vacation, personal leave, paid sick leave or other paid leave to serve as required by law on a jury or to appear in court as a witness. This does not create entitlement to a new category of paid leave, but it does require employers to permit employees to use *other* paid leave that they are *already entitled to* for purposes of serving on a jury or appearing in court as a witness.

Annual Pay Data Reports: Government Code section 12999 currently specifies that a private employer with 100 or more employees, or with 100 or more employees hired through a labor contractor, must submit a pay data report organized by job category to the California Department of Civil Rights. Under SB 464, any demographic information gathered by an employer or labor contractor for the pay data report must be collected and stored separately from the employee's personnel file. Further, any violation of the reporting requirements in Government Code section 12999 will now result in a mandatary, rather than optional, penalty.

Transparency in Frontier Artificial Intelligence Act: SB 53 enacts the Transparency in Frontier Artificial Intelligence Act (TFAIA) which imposes additional regulations on artificial intelligence (AI) systems or services. As part of TFAIA, additional whistleblower protections are provided to certain employees of AI tool developers who report the potential for danger to public health or safety based on the developer's activities.

TFAIA extends whistleblower protections to employees of frontier developers (i.e., developers of foundation models such as, e.g., ChatGPT) who disclose information to a person or entity with investigative authority so long as the employee had reasonable cause to believe that the information disclosed shows (1) that the frontier developer's activities pose a specific and substantial danger to the public health or safety resulting from a catastrophic risk, or (2) that the frontier developer has violated the TFAIA.

The law outlines the ways in which employees may make reports, as well as the notices that employers must provide to employees regarding their rights. If a civil action is brought for violation of the whistleblower provisions of the TFAIA, then AB 53 authorizes attorney's fees for a successful plaintiff .

Extension Of Rehire Rights Related to COVID-19 Layoffs: Existing law, in effect until December 31, 2025, requires employers to offer certain employees who were laid off due to COVID-19 specified information about job positions that become available and for which they are qualified, and to offer them positions based on a preference system. AB 858 extends these protections until January 1, 2027.

Bias Mitigation Training: SB 303 specifies that an employee's assessment, testing, admission, or acknowledgement of their own personal bias that was made in good faith and obtained as part of a bias mitigation training does not, by itself, constitute unlawful discrimination.

Delivery Driver Wages: AB 578 makes a number of changes which affect food delivery platforms, including additional parameters for the payment of the food and beverage delivery workers, requirements for customer service, and a process for customer refunds. AB 578 prohibits food delivery platforms from using payment models that use tips or gratuity to offset the base pay of the person delivering the food. Food delivery platforms must promptly give the delivery driver an accurate, clearly identified, and itemized breakdown of the pay received for a delivery, including, but not limited to, the base pay, gratuity or tips, and any promotional bonuses. Further, when issuing a customer refund because an order is not delivered or the wrong order is delivered, the food delivery platform must refund the amount of the originally paid gratuity to the customer but may not take or deduct the original gratuity amount from the delivery driver.

Statute of Limitation for Sexual Assault: AB 250 permits victims of sexual assault that occurred on or after the victim's 18th birthday to bring a claim for damages between January 1, 2026 and December 31, 2027, even if the claim would have otherwise been barred by the expiration of the relevant statute of limitations. This includes claims against an entity where the plaintiff alleges that (1) one or more entities or persons are legally responsible for the damages arising out of the sexual assault *and* (2) an entity or entities (including officers, directors, representatives, employees, or agents of the entity) engaged in a cover up or attempted cover up of previous cases or allegations of sexual assault by an alleged perpetrator. The effect of the law is to waive the statute of limitations for civil claims of sexual assault against an entity where there was a cover up (or attempted cover up).

Notification of Data Breaches: SB 446 requires the disclosure that businesses must make following a breach in the security of the data of California residents to be made within 30 calendar days of discovery or notification of the data breach. Additionally, the required submission to the Attorney General if more than 500 California residents are affected as a result of a single breach must be made within 15 calendar days of notifying affected consumers.

****Federal Guidance Affecting California Employers****

Department of Justice Memos Regarding DEI:

June 11, 2025, Department of Justice Enforcement Priorities Memo: The Department of Justice has issued a memorandum titled "Civil Division Enforcement Priorities" that lays out the Department's strategy for advancing the Administration's policy objectives. Significantly, the

memo includes as a priority "combat[ting] illegal private-sector DEI preferences, mandates, policies, programs, and activities" consistent with Executive Order 14,173.

The memo highlights the DOJ's new "Civil Rights Fraud Initiative," whereby the Civil Division will use the False Claims Act to advance the above objectives. The False Claims Act allows the government to bring suit for treble damages and penalties against any person or entity who knowingly submits or causes the submission of false claims to the government, and has incentives for whistleblowers who help bring cases.

In practice, this means the DOJ will use the False Claims Act to bring lawsuits to claw back money from entities that receive federal funds—including universities and federal contractors—if the government believes that those entities are engaging in DEI practices.

July 29, 2025, Attorney General Memo Regarding Unlawful Discrimination: The Attorney General issued a memorandum entitled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" which clarifies the Department's approach to the application of federal antidiscrimination laws to DEI programs or initiatives used by entities that received federal financial assistance or that are otherwise subject to federal antidiscrimination law. In particular, the memorandum provides examples of best practices that covered entities are encouraged to implement, as well as examples of unlawful practices which should be avoided in order to remain in compliance with federal antidiscrimination laws. Examples of best practices include eliminating diversity quotas and prohibiting demographic-driven criteria; examples of unlawful practices include providing race-based scholarships or utilizing preferential hiring practices for candidates of underrepresented groups.