

NIESAR & VESTAL LLP

## Law Alert

January 10, 2022

### **New Labor and Employment Laws Impacting the Workplace in 2022**

Several new labor and employment laws have begun taking effect across California. We include below a summary of select employment laws that took effect either on January 1, 2022 or earlier in 2021, and will impact the workplace in 2022.

#### **New Restrictions on Employee Non-disclosure and Non-disparagement**

California law previously prohibited certain employee settlement agreements from preventing the disclosure of factual information regarding various claims and allegations based upon sexual assault, sexual harassment, and workplace harassment or discrimination based on sex. SB 331, which impacts agreements entered into on or after January 1, 2022, expands these provisions to broadly prohibit confidentiality provisions in settlement and separation agreements involving workplace harassment or discrimination on any protected basis.

Further, the law requires employers to include certain provisions in separation or settlement agreements with employees. The law states that if an employer requires an employee to enter into a non-disparagement agreement or provision in connection with the employee's separation from employment, the provision must contain the following language:

“Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.”

In addition, SB 331 requires that an employer entering into a separation agreement with an employee must notify the employee of their right to consult an attorney and allow the employee at least five days to review the agreement. The employee may knowingly and voluntarily sign prior to that time.

#### **Amended Covid-19 Requirements**

Before October 2021, employers were required to report Covid-19 outbreaks in the workplace to local public health agencies within 48 hours. AB 654 took effect on October 5, 2021, and adjusts the timeline to 48 hours or one business day, whichever is later. The new law also clarified who must receive Covid-19 workplace exposure notifications, including that employer must provide information on Covid-19 employee-related benefits to employees who were on the same premises as a positive Covid-19 case within the infectious period.

Employers such as community clinics, adult day health centers, community care facilities, and child daycare facilities are exempt from Covid-19 outbreak reporting.

### **The “Right to Recall” Law**

SB 93, also known as the “Right to Recall” law, mandates certain employers to recall former workers that were laid off for COVID-related reasons when positions become available.

However, the law, effective April 16, 2021, does not apply to all California employers. Rather, SB 93 applies to specific categories, such as: hotels, private clubs, event centers, airport hospitality operations, and airport service providers, as well as janitorial, building maintenance, or security services to office, retail, or other commercial buildings.

Employers covered must make new job positions available to “laid-off employees” within five business days of establishing the position and give those employees five additional business days to accept or decline the offer.

The law specifies that “laid-off employees” must be offered employment if they were employed by the employer for 6 months or more during the 12 months preceding January 1, 2020; and whose most recent separation from active employment was due to a “reason related to the COVID-19 pandemic.”

### **Expansion of Record Retention Requirements**

SB 807, which became effective January 1, 2022, extends the period in which employers must retain personnel records for applicants and employees from 2 years to 4 years from the date the records were created or received, or the date the employment action was taken.

In the event that a complaint with the Department of Fair Employment and Housing has been filed against an employer, the employer must retain any related personnel records until the employer has been notified that the action has been fully resolved, or the first date after the period for filing a civil action has expired, whichever is later.

There is some ambiguity about the “personnel records” that must be retained because California law does not clearly define “personnel records.” Labor Code section 1198.5 requires employers to make available for inspection “personnel records” that the employer “maintains relating to the employee’s performance or to any grievance concerning the employee.” Division of Labor Standards Enforcement has issued guidance that also includes “personnel records” that are used to determine an employee’s qualifications for promotion, additional compensation, or disciplinary action, including termination.

Employers should verify and update their record retention policies and train HR managers to comply with SB 807.

### **In-Laws Included in the California Family Rights Act**

On January 1, 2022, leave under the California Family Rights Act (“CFRA”) has been expanded to provide employees with up to twelve weeks of job-protected leave to provide care to a parent-in-law with a serious medical condition.

The CFRA previously allowed for leave for an employee to care for a child, parent, grandparent, grandchild, sibling, spouse or domestic partner who has a serious health condition. AB 1033 adds parents-in-law to the definition of “family care and medical leave.”

### **Communication of the Required Employee Postings via Email**

SB 657, which took effect on January 1, 2022, allows that in any instance in which an employer is required to physically post information, the employer may **also** distribute that information to employees by email with the document or documents attached.

However, the new law simply clarifies the employer’s ability to communicate required information more effectively. This new law does not remove an employer’s obligation to physically display postings as required.

Employers should ensure their policies and employee handbooks are reviewed and updated to ensure they are compliant with the above-mentioned laws. If you have any questions regarding the most efficient ways to ensure that your business is compliant, please feel free to contact Gerald Niesar ([gniesar@nvlawllp.com](mailto:gniesar@nvlawllp.com)) or Carolina Aricu ([caricu@nvlawllp.com](mailto:caricu@nvlawllp.com)).

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