2024 Midyear Employment Law Update

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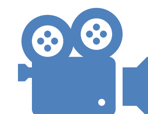

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Housekeeping

Submit questions through the Q&A function.

Keep questions relevant to the current topic.

Webinar runs from 10 a.m. to 11 a.m.

HRCI and SHRM credit codes given at the end.

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Have fun!

Agenda

- Regulatory and Statutory Updates.
- Recent Cases.
- Cases to Watch.
- Poster and Pamphlet Updates.

Regulatory And Statutory Updates

Fast Food Worker Minimum Wage

- Minimum wage for fast food workers increased to $20/hour effective April 1, 2024.
- Applies to employees of restaurants that are:
  - “Limited-service” (offer limited or no table service, and customers order and pay before consuming food and beverages);
  - Part of a chain of 60+ establishments nationwide; and
  - “Primarily engaged” in selling food and beverages for immediate consumption.
- Limited exceptions for restaurants with certain types of operations.

Fast Food Worker Minimum Wage, Cont.

- Minimum wage affects exempt employees:
  - The salary test for exempt fast food workers is based on the higher fast food minimum wage, not the state minimum wage.
- Covered employers must post:
  - Supplement for Fast Food Restaurant Employees (supplements Minimum Wage Order); and
  - Updated versions of Wage Orders 5 or 7 (as applicable).
- See DLSE FAQs at www.dir.ca.gov/dlse/Fast-Food-Minimum-Wage-FAQ.htm.

Health Care Worker Minimum Wage

- Minimum wage for “covered health care employees” will increase to between $18/hour and $23/hour.
- Law creates four separate minimum wage schedules that vary depending on the nature of the employer’s facility.
- Applies to covered employees employed by a wide range of health care employers.
- Exempt employees must be paid a salary that is the greater of:
  - Two times the state minimum wage for full-time employment; or
  - One and a half times the applicable health care worker minimum wage for full-time employment.
- Effective date is sometime between October 15, 2024, and January 1, 2025.

Health Care Worker Minimum Wage, Cont.

- When the law takes effect, covered employers must:
  - Provide notice to employees of the schedule that applies to them.
  - Post a Health Care Minimum Wage Supplement to the minimum wage order (which the Labor Commissioner's office will issue) and updated Wage Order 4 or 5.
- See DLSE FAQs at www.dir.ca.gov/dlse/Health-Care-Worker-Minimum-Wage-FAQ.htm.

Local Minimum Wage Increases Effective July 1, 2024

- Alameda: $17/hour.
- Berkeley: $18.67/hour.
- Emeryville: $19.36/hour.
- Fremont: $17.30/hour.
- Los Angeles City: $17.28/hour.
- Los Angeles County (*unincorporated areas)*: $17.27/hour.
- Malibu: $17.27/hour.
- Milpitas: $17.70/hour.
- Pasadena: $17.50/hour.
- San Francisco: $18.67/hour.
- Santa Monica: $17.27/hour.
- West Hollywood: $19.61/hour (hotel workers only).

New Local Ordinances For 2024

- Anaheim Hotel Worker Protection Ordinance (effective January 1, 2024).
- Berkeley Fair Workweek Ordinance (effective January 12, 2024).
- Los Angeles County Fair Chance Ordinance (effective September 3, 2024).

PAGA Reform

- The Private Attorneys General Act (PAGA) allows an aggrieved employee to sue on behalf of themselves and all other aggrieved employees for civil penalties on top of the damages for various wage and hour violations.
- In addition, aggrieved employees may recover attorneys' fees and costs for their PAGA action.
- California passed PAGA reform that applies to PAGA notices filed on or after **June 19, 2024**.
- The law addresses many issues with PAGA, including creating a new penalty structure with lower penalties under certain circumstances and expanding employers' right to cure violations.

PAGA Reform, Cont.

- Most importantly, employers are now able to reduce potential penalties by taking “all reasonable steps” before and after receiving a PAGA notice.
- “All reasonable steps” include:
  - Conducting periodic payroll audits and taking appropriate action in response to the audits.
  - Disseminating lawful written policies.
  - Training supervisors on applicable law.
  - Taking corrective action against supervisors.
- For more information, watch our PAGA reform webinar at hrcalifornia.calchamber.com/forms-tools/webinars/20240718-paga-reform.

Workplace Violence Prevention Standards

- Applies to most California employers except:
  - Health care employers subject to the Violence Prevention in Health Care regulation.
  - Employees teleworking from a location of the employee's choice outside of the employer's control.
  - Workplaces with less than 10 employees at any given time that are not accessible to the public.
- Effective July 1, 2024, all covered employers must:
  - Implement a workplace violence prevention plan;
  - Train employees on the plan;
  - Record incidents of workplace violence; and
  - Maintain all required records.

Workplace Violence Prevention Plan

- All covered employers must create a written workplace violence prevention plan.
- The plan can be either a standalone document or integrated with an existing Injury and Illness Prevention Program (IIPP).
- The plan must be tailored to the specifics of the employer's worksite(s) and worksite hazards.
- The plan must provide information and/or procedures relating to 13 different topics.
- Employers must review and revise the plan annually, when a deficiency is observed or becomes apparent, and after a workplace violence incident.

Training On The Plan

- Employers must provide effective training on their workplace violence prevention plan.
- Training materials must be appropriate in content and vocabulary to the educational level, literacy and language of employees.
- Training must be provided at the following times:
  - When the plan is first established and annually thereafter.
  - Whenever there are changes to the plan or a new hazard is identified (training may be limited to the plan changes or new hazards).
- Training must allow for interactive questions and answers with someone knowledgeable about the plan.

Recordkeeping Requirements

- A workplace violence incident log must be created for every workplace incident.
- Employers must retain the following:
  - Records of hazard identification, evaluation and correction (five years).
  - Violent incident logs (five years).
  - Records of investigations (five years).
  - Training records (one year).
- Must make records available to the California Division of Occupational Safety and Health (Cal/OSHA) upon request.
- Records — except post-incident investigation records — must be made available to employees and their representatives for examination and copying within 15 days of request.

Indoor Heat Illness Prevention Standards

- Effective July 23, 2024.
- The standards apply to all "indoor" work areas where the "temperature" equals or exceeds 82 degrees Fahrenheit when employees are present.
- Covered employers must take steps to protect workers from heat illness, including providing water, rest and cool-down areas.
- Additional requirements apply when the temperature reaches 87 degrees, such as cooling down the work area, implementing work-rest schedules and providing personal heat-protective equipment.

Indoor Heat Illness Prevention Standards, Cont.

- All employees must be trained before they begin work that is reasonably anticipated to result in exposure to a risk of heat illness.
- Employers must create and implement an effective written indoor heat illness prevention plan, which can be either a standalone document or integrated into an existing IIPP or outdoor heat illness prevention plan.
- See the DIR's FAQs at www.dir.ca.gov/dosh/heat-illness/indoor-faq.html.

Pregnant Workers Fairness Act (PWFA)

- Federal law that took effect June 2023.
- Implementing regulations were effective June 18, 2024.
- Law requires employers with 15 or more employees to provide “reasonable accommodations” to an employee’s known limitations related to pregnancy, childbirth or related medical conditions unless doing so would cause an “undue hardship” to the employer.
- Imposes accommodation requirements that differ from California’s Pregnancy Disability Leave (PDL).
- Employers should ensure compliance with both PDL and the PWFA.

PWFA — Accommodation Can Include Suspension Of Essential Functions

- Duty to accommodate under the PWFA is broader than under PDL because accommodations can include temporarily suspending essential functions.
- The inability to perform an essential function must be temporary, meaning the worker can perform the essential function in the near future.
- Under the regulations, there is a presumption that a pregnant employee can perform the essential functions in the near future because "they could perform the essential functions within generally 40 weeks" — i.e., when the pregnancy ends.

PWFA — Predictable Assessments

- “Predictable assessments” are accommodations that will be reasonable in “virtually all cases” and do not impose an undue hardship on an employer.
- These include allowing an employee:
  - To carry water and drink as needed during the workday;
  - Additional restroom breaks;
  - To sit when their work requires standing and standing when their work requires sitting; and
  - Breaks as needed to eat and drink.
- Employers can still argue undue hardship.

PWFA — Documentation

- If reasonable under the specific circumstances, employers may require documentation to “confirm the physical or mental condition” that is related to pregnancy, childbirth or related conditions, and a description of the adjustment needed.
  - More specific than what California law allows.
- Documentation is not reasonable, and employers cannot require it, when:
  - The known limitation and need for accommodation are obvious;
  - The employee has already provided sufficient information, such as prior medical certification;
  - The employee requests a “predictable assessment”; or
  - The employee is requesting lactation accommodations.

Recent Cases

A Single Act Can Be Harassment Under FEHA

- Twanda Bailey's coworker used the N-word toward her on one occasion. Fearing retaliation, she did not complain to her employer's personnel officer.
- Bailey's supervisor learned of the conduct and reported it to the personnel officer, who did not file a complaint, as required by policy, and began ostracizing Bailey.
- Eventually, HR received a complaint, but did not investigate because it concluded there was no harassment or retaliation.
- Bailey sued, alleging race harassment and retaliation under the Fair Employment and Housing Act (FEHA), but the trial court dismissed the case, and the court of appeal upheld the dismissal.

A Single Act Can Be Harassment Under FEHA, Cont.

- The lower courts did not find the solitary use of the N-word or Bailey's ostracization severe enough.
- The California Supreme Court disagreed, finding that severity is determined by how the conduct would impact a reasonable person of the same race as the plaintiff. The court noted:
  - The severity of the "unambiguous racial epithet" used; and
  - That Bailey had to work in close proximity to the coworker who used the slur.
- The court also held that the personnel officer's conduct could have materially affected Bailey's employment, in part because of the personnel officer's decision not to report the conduct.
- *Bailey v. San Francisco District Attorney's Office, et al.*, No. S265223 (July 29, 2024).

‘Good Faith’ Defense Precludes Wage Statement Penalties

- Gustavo Naranjo filed a class action against his employer for failure to pay meal period premiums; he also sought waiting time and wage statement penalties based on the alleged failure to pay premiums.
- The court of appeal held the employer’s failure to pay premiums was not willful, which precluded a claim for waiting time penalties. Whether that defense applied to the claim for wage statement penalties was appealed to the California Supreme Court.
- The California Supreme Court upheld a “good faith” defense to a claim for wage statement penalties, holding that an employer’s reasonable and good faith belief it provided compliant wage statements precludes penalties under Labor Code 226.
- *Naranjo v. Spectrum Security Systems, Inc.,* 15 Cal.5th 1056 (May 6, 2024).

Time Spent Under Employer's Control Is 'Hours Worked'

- An employee filed a class action in federal district court seeking payment of wages for time employees spent:
  - Waiting for security checks when exiting a security gate;
  - Driving on the employer's property between a security gate and the employee parking lots, where the employees had to follow speed limits and other employer-imposed restrictions; and
  - During meal periods when employees were not allowed to leave the employer's premises.
- The district court granted the employer's motions for partial summary judgment, and the employee appealed.
- The Ninth Circuit asked the California Supreme Court to answer three questions about what constitutes "hours worked."

Time Spent Under Employer’s Control Is ‘Hours Worked,’ Cont.

- **Question No. 1**: “Is time spent on an employer's premises in a personal vehicle and waiting to scan an identification badge, have security guards peer into the vehicle, and then exit a security gate compensable as ‘hours worked’ within the meaning of ... Wage Order No. 16?”
- **Answer**: Yes. The security check is required by the employer for its own benefit and the employee is thus subject to the employer’s control, which makes the time spent “hours worked” that must be paid.

Time Spent Under Employer's Control Is 'Hours Worked,' Cont.

- **Question No. 2**: "Is time spent on the employer's premises in a personal vehicle, driving between the security gate and the employee parking lots, while subject to certain rules from the employer, compensable as 'hours worked' or as 'employer-mandated travel' within the meaning of ... Wage Order No. 16?"
- **Answer**:
  - The time may be compensable as "employer-mandated travel" if the security gate was the first location where the employee's presence was required for an employment-related reason other than accessing the worksite.
  - The time is not compensable as "hours worked" because the imposition of ordinary workplace rules on employees during their drive to the worksite in a personal vehicle does not create the requisite level of employer control.

Time Spent Under Employer's Control Is 'Hours Worked,' Cont.

- **Question No. 3**: "Is time spent on the employer's premises, when workers are prohibited from leaving but not required to engage in employer-mandated activities, compensable as 'hours worked' within the meaning of ... Wage Order No. 16, or under California Labor Code Section 1194, when that time was designated as an unpaid 'meal period' under a qualifying collective bargaining agreement?"
- **Answer**: Yes. If the employer prohibits the employees from leaving the premises/designated area during meal periods and that prohibition prevents employees from engaging in personal activities, the meal period is "hours worked" and must be paid.
- *Huerta v. CSI Electrical Contractors,* 15 Cal.5th 908 (July 29, 2024).

Cases To Watch

Rounding Of Timekeeping

- Question: Under California law, are employers permitted to use neutral time-rounding practices to calculate employees' work time for payroll purposes?
- The case is fully briefed before the California Supreme Court. Oral argument has not been scheduled.
- The court's holding will impact rounding practices in California — and may eliminate the practice altogether.
- *Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022); California Supreme Court No. S277518.

Poster And Pamphlet Updates

California Poster And Pamphlet Updates

- Unemployment Insurance pamphlet (revised January 1, 2024).
- Workers' Compensation "Time of Hire Notice" (revised February 1, 2024).
- Supplemental Notice to H-2A Employees (effective March 15, 2024).
- Supplements to Minimum Wage Order for Fast Food Restaurant Employees (effective March 2024).
- Wage Orders 5 and 7 (revised March 2024).
- Local minimum wage ordinance posters (effective July 1, 2024).

Certificate of Completion

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August 15, 2024

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(Name)

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