



# STOKES WAGNER

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## Happy New Year from Stokes Wagner! Here's a Look at California's New Employment Laws in 2021

<i>Workplace Related</i>		
Minimum Wage	<p>California's Minimum Wage is \$13.00 per hour for employers with 25 employees or less, and \$14.00 per hour for employers with 26 employees or more.</p> <p>San Diego's Minimum Wage is \$14.00 per hour, regardless of the number of employees, and is applicable to all non-exempt employees in San Diego.</p>	Effective January 1, 2021
CA Salary Threshold Increase	<p>For employers with</p> <ul style="list-style-type: none"> <li>• 25 employees or less - \$54,080 per year (or \$4,506.67 per month)</li> <li>• 26 employees or more - \$58,240 per year (or \$4,853.34 per month)</li> </ul> <p>Exempt employees in San Diego must follow CA minimum wage laws for salaried employees.</p>	Effective January 1, 2021
Payroll Data Reporting to DFEH (SB 973)	<p>Employers with 100+ employees (FT and PT) must report</p> <ul style="list-style-type: none"> <li>• the number of employees by specified job categories; and</li> <li>• the number of employees by race, ethnicity, and sex in US Bureau of Labor's "pay bands" based on the employees' W-2 for the prior year.</li> </ul> <p>File by March 31, 2021 and annually thereafter: <a href="https://www.dfeh.ca.gov/paydatareporting/">https://www.dfeh.ca.gov/paydatareporting/</a></p> <p>A sample template is provided as an attachment to this update.</p>	Effective January 1, 2021  Filing Deadline March 31, 2021
CCPA Reprieve (AB 1281)	<p>Provides Human Resources with another year of exemption from the CCPA from all but two of its provisions.</p> <ul style="list-style-type: none"> <li>• HR must provide "Notice at Collection" when or before collecting personal information which explains: <ul style="list-style-type: none"> <li>(1) the categories of personal information the company will collect;</li> <li>(2) the business or commercial purposes for which the categories of personal information will be used; and</li> <li>(3) if the business sells personal information, the link titled "Do Not Sell My Personal Information" as required by the CCPA or the URL to where the webpage can be found.</li> </ul> </li> <li>• Possible statutory damages on an individual or class-wide basis for failure to properly safeguard personal information</li> </ul>	Exemption expires January 1, 2022

<b><i>Sexual Harassment and Discrimination</i></b>		
<p>Extended Time to File Labor Commissioner Claims (AB 1947)</p>	<p>Increases the time to file Labor Commissioner retaliation/discrimination claims from 6 months to 1 year.</p> <ul style="list-style-type: none"> <li>• Applies to claims that employer wrongfully terminated or otherwise retaliated against an employee for bringing a wage claim with the Labor Commissioner.</li> <li>• No retaliation against employees for bringing wage claims with the Labor Commissioner!</li> <li>• Labor Commissioner may award and collect attorney’s fees.</li> </ul>	<p>Effective January 1, 2021</p>
<p>Attorney’s Fees for Whistleblower Claims (AB 1947)</p>	<p>Provides for attorney’s fees to Plaintiff in whistleblower claims.</p> <ul style="list-style-type: none"> <li>• Whistleblower protections prohibit employers from making rules, policies, or practices which prevent employees from disclosing violations of law to government/law enforcement, or to a person with authority over the employee (i.e., management).</li> <li>• Also prohibits retaliation for disclosing information, or for refusing to participate in illegal activity.</li> <li>• Adds to arsenal of claims through which Plaintiffs can recover attorney’s fees.</li> </ul>	<p>Effective January 1, 2021</p>
<p>Expanded Protections for Victims of Domestic Abuse (AB 2992)</p>	<p>Survivors of crimes can take unpaid leave without losing their jobs, regardless of whether any person is arrested for the crime.</p> <p>Includes those victimized by stalking, domestic violence, sexual assault, or crimes that caused physical injury or that caused mental injury and a threat of physical injury, and any person whose immediate family member is deceased as the direct result of a crime.</p> <p>Employee must provide reasonable advance notice of time off unless it is not feasible. Protection for unscheduled absences can be certified with a police report, a court order, documentation from victims’ services or any other documentation that “reasonably verifies” that the crime or abuse occurred, including a written statement signed by the employee.</p> <p>Employers with 25+ employees cannot take adverse action against an employee, who is a victim, for taking time off from work to:</p> <ul style="list-style-type: none"> <li>• seek medical attention for injuries caused by the crime or abuse;</li> <li>• obtain services from a domestic violence shelter or victim services organizations as a result of the crime or abuse;</li> <li>• obtain counseling or mental health services related to the crime; or</li> <li>• participate in safety planning to increase safety from future abuse.</li> </ul> <p>The employee must disclose their status as a victim of crime or abuse to trigger the employer’s responsibility of providing “reasonable accommodations” upon employee’s return to work.</p> <p>The employer must maintain the confidentiality of any employee requesting the protected leave.</p>	<p>Effective January 1, 2021</p>

<b>Employee Benefits</b>		
<p>CFRA Expansion (SB 1383)</p>	<p>Expands application of the California Family Rights Act (“CFRA”) to employers with five or more employees (eliminating the 50+ employees within 75 miles requirement).</p> <ul style="list-style-type: none"> <li>• To be eligible, employees must be employed for at least one year, and have worked 1250 hours during the preceding 12 months (can be non-consecutive).</li> </ul> <p>Employers can no longer refuse to reinstate an employee under CFRA who is on protected leave of absence and is among their highest paid 10% of employees where reinstating would cause grievous injury to operations. FMLA maintains this key employee exemption.</p> <ul style="list-style-type: none"> <li>• When CFRA and FMLA overlap, time off can be treated as covered by both laws.</li> <li>• Where CFRA extends a right not covered by FMLA, then FMLA will remain available for use by an FMLA-eligible employee.</li> </ul> <p>Expands reasons for leave to include:</p> <ul style="list-style-type: none"> <li>• Serious health condition of parent, grandparent, grandchild, sibling, spouse, domestic partner, and child (including the child or dependent of domestic partner, regardless of age)</li> <li>• Military Exigency provides 12 weeks of leave in a 12-month period for deployment or military activities of an employee’s spouse, domestic partner, child, or parent who is a member of the Armed Forces (like FMLA)</li> <li>• Expanded Bonding Leave allows each parent, if working for the same employer, 12 weeks of baby-bonding leave</li> </ul> <p>Updated required notice poster included as an attachment to this update.</p>	<p>Effective January 1, 2021</p>
<p>Paid Sick Leave/ Kin Care (AB 2017)</p>	<p>COVID-19 PSL expired on 12/31/20. Existing law provides:</p> <ul style="list-style-type: none"> <li>• California Paid Sick Leave <ul style="list-style-type: none"> <li>○ 48 hours or 6 days per year accrual cap</li> <li>○ 24 hours or 3 days annual use cap</li> <li>○ Accrue 1 hour per 30 hours work or front load 24 hours/3 days</li> </ul> </li> <li>• San Diego <ul style="list-style-type: none"> <li>○ 80 hours accrual cap</li> <li>○ Annual use cap 40 hours</li> <li>○ Accrue 1 hour per 30 hours worked/front load 40 hours</li> </ul> </li> </ul> <p>Employees now possess <i>sole discretion</i> in designating leave as sick leave when taken to care for a family member (employee’s child, parent/guardian, spouse/domestic partner, grandparent, grandchild, and sibling).</p>	<p>Effective January 1, 2021</p>
<p>Handwashing Requirement (AB 1867)</p>	<p>A food employee working in any food facility shall be permitted to wash their hands every 30 minutes and additionally as needed.</p>	<p>Effective September 9, 2020</p>
<p>Security Guard Rest Break Exemption (AB 1512)</p>	<p>Change in law allows requiring certain security guards to remain on property and “on-call” during rest breaks without incurring a rest period penalty. Interrupted rest breaks must be allowed to restart as soon as is practicable.</p>	<p>Effective September 30, 2020 but only applies to cases filed after January 1, 2021.</p>

	<p>Applies only to security guards who are:</p> <ul style="list-style-type: none"> <li>• Covered by a collective bargaining agreement (i.e., union), and</li> <li>• Employed by a registered private patrol operator</li> </ul> <p>Otherwise, they must be relieved of duty during meal and rest breaks.</p>	
<b><i>Settlement Agreements and Arbitration</i></b>		
<p>Modification to No-Hire Provisions (AB 2143)</p>	<p>Expands exceptions to the restriction of no-hire provisions in settlement agreements with an aggrieved employee who has filed a complaint against the employer in court, before an administrative agency, in arbitration, or internally with an employer.</p> <ul style="list-style-type: none"> <li>• The law now permits no-rehire provisions if the aggrieved party engaged in criminal conduct.</li> <li>• For the exception to apply, the employer must have documented the good faith determination of sexual harassment, sexual assault, or criminal conduct before the aggrieved party filed the claim against the employer.</li> </ul>	<p>Effective January 1, 2021</p>
<p>Interactive Process under FEHA (<i>Shirvanyan v. LA Community College Dist.</i>)</p>	<p>Outlines employee’s duty in identifying reasonable accommodation when suing their employer for failure to engage in interactive process:</p> <ul style="list-style-type: none"> <li>• Timing of the Identification <ul style="list-style-type: none"> <li>○ Need not suggest a possible accommodation to begin the process but must be able to show at trial that a reasonable accommodation existed at the time the employer should have begun the interactive process.</li> </ul> </li> <li>• What if no accommodation is available? <ul style="list-style-type: none"> <li>○ Then recovery under FEHA is unavailable to plaintiffs since it would not have remedied the issue that required the interactive process to begin with.</li> </ul> </li> <li>• Finite leave as an accommodation <ul style="list-style-type: none"> <li>○ Available when it is likely that at the end of the leave, the employee would be able to perform his or her duties.</li> </ul> </li> </ul>	<p>Effective November 30, 2020</p>
<p>Labor Commissioner Representation (SB 1384)</p>	<p>Provides that the Labor Commissioner may represent claimants in wage and hour claims.</p> <ul style="list-style-type: none"> <li>• Applies to arbitrations where the employer appeals the Labor Commissioner’s ruling.</li> <li>• Available where claimant cannot afford counsel.</li> </ul>	<p>Effective January 1, 2021</p>
<p>Defending Duplicative PAGA Actions (<i>Gold v. FSLA</i>)</p>	<p>Courts recognize that PAGA actions alleging same violations but brought by different plaintiffs are duplicative and are subject to single recovery.</p> <p>Multiple PAGA cases covering the same claims against the same employer can be attacked early in litigation through demurrer/motion to dismiss.</p> <p>Settling the earliest-filed PAGA claim may cut off later filed PAGA actions alleging the same violations</p>	<p>Decided December 10, 2020</p>

	Avoid collective actions with arbitration agreements, and approach PAGA claim defense on a whole-employer or whole-property basis.	
<b>COVID-19 Updates</b>		
COVID-19 Notification and Reporting Requirements (SB 1159, AB 685 & Cal-Osha Emergency Temporary Standards)	<p>COVID-19 Notification &amp; Reporting Requirements attached to this update with additional details.</p> <ul style="list-style-type: none"> <li>• Workers Compensation Outbreak Presumption (SB1159) <ul style="list-style-type: none"> <li>○ Employers must notify their Workers’ Compensation claims administrator within 3 business days of notice of a positive COVID-19 test.</li> </ul> </li> <li>• Employee Notification &amp; Local Reporting of Outbreaks (AB 685) <ul style="list-style-type: none"> <li>○ When an employer receives requisite notice of potential exposure to COVID-19, or when an outbreak occurs (3 cases in a 2-week period), employers must notify their local Public Health Department and all employees who were on the premises at the same worksite during the infections period.</li> </ul> </li> <li>• Cal-OSHA <ul style="list-style-type: none"> <li>○ 10 categories of things an employer must do when an employer receives requisite notice of potential exposure to COVID-19.</li> </ul> </li> </ul>	<p>SB 1159 effective September 27, 2020</p> <p>AB 685 effective January 1, 2021</p> <p>Cal-OSHA effective November 30, 2020 but delayed enforcement until January 15, 2021</p>
Mandatory COVID-19 Vaccinations in the Workplace (EEOC)	<p>EEOC issued guidelines regarding mandatory vaccinations in the workplace.</p> <ul style="list-style-type: none"> <li>• Administration of vaccination is not a “medical examination”.</li> <li>• Private employers may require vaccination as a condition of continued employment, or at least to returning to the workplace.</li> <li>• Must provide a reasonable accommodation for employees with medical conditions or sincerely held religious beliefs.</li> <li>• If an individual refuses vaccination, determine whether the individual poses significant threat to others by refusing a vaccination with the 4-factor individualized assessment: <ol style="list-style-type: none"> <li>(1) duration of risk;</li> <li>(2) nature/severity of the potential harm;</li> <li>(3) likelihood of the potential harm; and</li> <li>(4) imminence of the potential harm</li> </ol> </li> <li>• If the individual poses direct threat, assess whether reasonable accommodation would eliminate/reduce risk prior to excluding employee. Use the interactive process to identify options and consider the nature of workforce, employee’s position, and his/her contact with others.</li> <li>• If no reasonable accommodation is possible, employers can legally exclude employee from the workplace, but termination decision should be a fact-specific inquiry exercised cautiously.</li> <li>• Employers may be obligated to offer remote work option or leave under applicable laws or the employer’s existing leave policy.</li> <li>• Employers who provide vaccinations should avoid pre-screening questions that seek disclosure of genetic information or disabilities.</li> <li>• Employers who are not providing vaccination but require proof of vaccination should warn employees not to provide medical or genetic information as part of the proof.</li> </ul>	



**Questions? Contact Stokes Wagner**

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