

BUSINESS AND ECONOMY

Stay on Top of New Laws, Regulations in 2022

EVERY YEAR starts with a flurry of new laws and regulations that California employers have to contend with.

This year is no different as the state legislature had a busy year and the stresses of the COVID-19 pandemic resulted in more activity. The end result is another round of new laws that employers need to stay on top of.

Here are the top regulations and laws affecting California businesses.

1. Big change to Cal/OSHA citations

A new law adds two new Cal/OSHA violation categories that carry penalties of up to \$124,709 per violation – the same as for “repeated” or “willful” citations currently.

SB 606 adds “enterprise-wide” and “egregious” violations to the mix, giving Cal/OSHA broader leeway to cite employers it finds are flagrantly violating California’s workplace safety regulations.

The law creates a rebuttable presumption that an employer with multiple worksites has committed an enterprise-wide violation if:

- It has written policies or procedures that violate Cal/OSHA regulations, or

- The agency has evidence of a practice of it skirting the rules at one or more of its locations.

If the employer is unable to rebut this presumption, Cal/OSHA can issue an enterprise-wide citation that would require abating the violation at all locations. The employer can also face a maximum penalty of \$124,709 per violation.

SB 606 also authorizes Cal/OSHA to issue a citation for an egregious violation if it believes that an employer has willfully and egregiously violated an occupational safety or health standard, order, special order or regulation.

The reason this could get expensive for an entity hit with egregious violations is that each instance of employee exposure to that violation will be considered a separate violation.

2. COVID exposure notification

AB 654 updates requirements for what an employer must do if there is an outbreak of COVID-19 cases at its worksites.

This law curtails earlier-reporting requirements as well as other required notifications, and updates several provisions of an earlier outbreak notification law as follows:

- Firms have one business day to report a workplace COVID-19 outbreak to Cal/OSHA and health authorities. Employers do not need to issue notices on weekends and holidays.
- When an employer has multiple worksites, it only needs to notify employees who work at the same worksite as an employee who tests positive for coronavirus.

3. California Family Rights Act

AB 1033 expands the CFRA to allow employees to take family and medical leave to care for a parent-in-law with a serious health condition.

It also adds a requirement that mediation is a prerequisite if an employer with between five and 19 workers is the subject of an employee lawsuit.

See ‘Workers’ on page 2



CONTACT US

Pleasant Hill Office
363 Civic Drive, 100
Pleasant Hill, CA 94523
Phone: 925-686-2860

Morgan Hill Office
15005 Concord Circle
Morgan Hill CA 95037
Phone: 408-842-2131

Elk Grove Office
2775 Cottage Way, Suite 21
Sacramento CA 95825
Phone: 916-970-2745

San Diego Office
5330 Carroll Canyon Rd., Suite 110
San Diego, CA 92121
Phone: 858-345-5787

License No. 0K07568

Workers Can Take Family Medical Leave to Care for In-Laws

4. Workplace settlement agreements and NDCs

A new law took effect Jan. 1 that prohibits employers from requiring non-disclosure clauses in settlement agreements involving any workplace harassment or discrimination claims. This builds on prior law that barred NDCs only in cases of sex discrimination or sexual harassment.

The new law expands that prohibition to all protected classes, such as disability, race, age, religion, etc.

One important note: While employees can't be prohibited from discussing the facts of the case, employers can still use clauses that prohibit the disclosure of the amount paid to settle a claim.

Also, employers can still include non-disparagement clauses or similar provisions in agreements, as long as they also include specific language stating the employee's right to discuss the facts of the case.

5. New minimum wage

Effective Jan. 1, employers have to start paying their employees a higher minimum wage. The minimum wage for workers at operations with 25 or fewer employees bumped up to \$14 an hour, while it jumped to \$15 an hour for workers at firms with 26 or more employees.

The increases are part of a state law that has steadily hiked the minimum wage since Jan. 1, 2017, when it was around \$10.

Please note that many jurisdictions in the state have minimum wages that are higher than the state minimum wage, including San Francisco at \$16.32 an hour, \$16.45 an hour in Palo Alto and Emeryville at \$17.13.

6. Wage theft penalties

AB 1003, which took effect Jan. 1, adds a new penalty to the California Penal Code: Grand Theft of Wages. The law makes an employer's intentional theft of wages (including tips) of more than \$950 from one worker, or \$2,350 for two or more, punishable as a grand theft.

The law, which also applies to wage theft from independent contractors, allows for recovery of wages through a civil action.

7. COVID cases may be included in X-Mods

The Workers' Compensation Insurance Rating Bureau of California has proposed plans to start requiring COVID-19 claims to be included when calculating employers' X-Mods.

The proposal would bring to an end current rules that exclude the impact of COVID-19 workers' compensation claims on X-Mods.

If approved by the state insurance commissioner, the new rule would apply only to claims with an injury date on or after Sept. 1, 2022.

8. Notices can be e-mailed

A new state law authorizes employers to distribute required posters and notices to employees via e-mail in addition to mail. Required posters and notices will still need to be posted in the workplace.

9. Warehouse quota rules

Under a new law warehouse employees must be given a written description of the quotas to which they are subject within 30 days of hire.

Common quotas include the number of tasks the worker must perform, the materials to be produced or handled, and any adverse employment action that may result from a failure to meet the quota.

Employees are not required to meet a quota if it:

- Prevents them from taking required meal or rest periods,
- Prevents them from using the bathroom (including the time it takes to walk to and from the toilet), or
- Contravenes occupational health and safety laws.



QUOTA RULES OVERHAULED: Warehouse workers can't be held to quotas that are unreasonable under the new law.

10. Personnel records retention

As of Jan. 1, employers are required to retain personnel records for applicants and employees for a minimum of four years (up from the previous requirement of three years).

That time could be expanded further if the employer is notified that a complaint has been filed through the California Department of Fair Employment and Housing.

In such instances, the records must be retained until the matter has been resolved. ❖

Time to Post Your OSHA Form 300A

Employers with 10 or more employees must post their completed OSHA Form 300A starting Feb. 1 through April 30. The form must be posted where the company usually posts other employee notices.

Employers who must file electronically:

- Employers with 250 or more workers at an establishment.
- Employers with 20-249 employees in high-hazard industries.

COVID-19 cases

Employers must also record work-related COVID-19 cases like any other occupational incident. To be recordable, an illness must be work-related and result in one or more of the following:

- Days away from work
- Restricted work or transfer to another job
- Medical treatment beyond first aid
- Loss of consciousness
- A significant illness
- Death.

If a work-related COVID-19 case meets any of these criteria, covered employers must record the case on their 300 and 300A forms.

The Costs of Living Longer

As Americans live longer, they are spending more of their later years in need of custodial medical care. Is long-term care insurance the best choice to alleviate the costs?

IN GENERAL, Americans are living longer. While that's good news, it means more are going to live out a substantial part of their later years in need of a large measure of custodial medical care. The U.S. Department of Health and Human Services estimates that nearly 70% of people over the age of 65 will require long-term care (LTC) in the future, including services like home visits by healthcare professionals, stays in a nursing home and 24-hour medical support.

It makes sense to plan ahead for the possibility. LTC is expensive – the national average daily cost of a private room in a nursing home is \$275. And that hit comes when you are likely least prepared for it. It doesn't take long to eat away savings and the kids' inheritance. You can protect yourself by buying long term insurance, but you'll have to determine how early in life you should start paying premiums.

Consider long term insurance while you're healthy

Many people first consider buying coverage as they are approaching retirement, but doing so earlier in life has advantages. If you purchase early, you are more likely to qualify for preferred rates and your lifetime expenses may be fewer. If you wait too long, you risk being denied coverage.

Sometimes it makes more sense to invest the money you would otherwise spend on premiums and use those returns to pay future LTC costs. An added benefit to this strategy: If you don't need LTC, you're not out the money.

But consider: Those assets may not grow fast enough to cover your costs. Also, many LTC policies have an inflation adjustment built into the policy.

For some, however, carrying the costs of LTC themselves makes sense – for instance, if you have significant assets.



Weigh your options

Before making your decision, consider the following:

- **LTC costs where you live.** Costs vary greatly depending on your location. Those who live in high-cost regions typically face higher premiums, while those in low-cost regions typically pay smaller premiums.
- **Your family's health history.** A family background of long-term health issues may influence your decision to get insurance.
- **New LTC options.** Several new LTC insurance products, including hybrid life/LTC insurance plans, provide greater flexibility in long-range planning.

Whether you buy insurance or set aside assets to cover the costs, you should talk to a trusted financial professional about making LTC a part of your financial plan. That's the first step toward protecting your loved ones financially and emotionally.

Talk to your financial planner about:

- The need for long-term care insurance and whether it makes sense for you.
- Choosing the LTC insurance policy that is suitable your individual needs.
- How long you should wait before buying a policy. ❖

Edward C. Rusnak
Joseph Yang

Sagemark Consulting
3000 Executive Parkway, Suite 400
P.O. Box 5154
San Ramon, CA 94583

Phone: (925) 659-0372

Fax: (925) 804-2472

E-mail: Edward.Rusnak@LFG.com

Ed Rusnak and Joseph Yang are registered representatives of Lincoln Financial Advisors.

CA Insurance License # 0E78894 (Edward Rusnak)

CA Insurance License #0H84609 (Joseph Yang)

Securities offered through Lincoln Financial Advisors Corp., a broker-dealer (member SIPC). Investment advisory services offered through Sagemark Consulting, a division of Lincoln Financial Advisors Corp., a registered investment advisor. Insurance offered through Lincoln Marketing and Insurance Agency, LLC and Lincoln Associates Insurance Agency, Inc. and other fine companies.

CRN-4215253-012122

LEGAL RISK

'Take-Home' COVID Lawsuits Spark Fears

CAN SOMEONE recover damages from a business if they claim that a family member caught COVID-19 at work and spread it to them? For California businesses, a court recently said that they might be able to. And courts in other states may use the decision as guidance.

A California appellate court in December ruled that a lawsuit filed by the widow of a 72-year-old man who died of COVID-19 in April 2020 could proceed. While the decision does not mean that she will win, it does mean that California courts will not automatically dismiss these kinds of suits.

Legal observers worry that the court green-lighting the "COVID-19 take-home" case to proceed could set off a cavalcade of similar lawsuits, and that if the plaintiffs are victorious it could open a whole new area of liability: Employers being liable for illnesses transmitted from one person to another in a workplace that leads to further infections among an employee's family.

Business groups warned in court papers filed before the decision that such a ruling could prompt lawsuits by an infected employee's family, friends and anyone infected by that circle of people.

The facts

The case decided by the Second Appellate California District Court of Appeal was filed by the widow, who was an employee of See's Candy in South San Francisco. She alleges that the company did not take the appropriate steps to protect workers from COVID-19 in the workplace.

After the employee contracted COVID-19 at work, both her daughter and husband contracted it and four weeks later her husband died.

Late in 2020, she and her three daughters sued the company for allegedly causing his death.

The company argued that the suit should be dismissed because his death derived from an employment-related illness. Workers' compensation law bars employees from suing their employers over

workplace injuries and illnesses.

The trial court allowed the suit to proceed, and the company appealed. The appellate court's decision means that the suit will proceed to trial, though the company could appeal to the state supreme court.

Why this case is important

This is the first appellate court decision that has cleared a COVID take-home lawsuit to go forward.

It's legally binding only in California; however, judges in other states considering these types of suits may use it for guidance.

Business groups filed briefs supporting the company, saying that allowing lawsuits like this to proceed would open the door for suits by anyone in an infected employee's family and friends – and anyone with whom the family and friends came into contact.

These suits would make it harder for small businesses to recover from the losses caused by the pandemic, they argued.

Unlike California, 30 states have enacted laws requiring individuals bringing lawsuits like this one to prove that the employer was grossly negligent. California law applies a lesser standard.

Two dozen similar suits have been filed around the country. A quarter of them were dismissed and some were settled out of court.

The takeaway

Those bringing the suits still face a difficult task – proving that an employee contracted the virus at work and that the exposure at work resulted in the family member or friend becoming infected.

Still, until a verdict comes down, businesses face a risk of being sued by their own employees for similar reasons. Even if a company wins its case, it will still have to pay for legal fees.

It's important that employers continue to follow OSHA and Centers for Disease Control guidance on protecting workers from COVID-19 to avoid being swept up in similar litigation. ❖



Produced by Risk Media Solutions on behalf of Pacific Diversified Insurance Services, Inc.. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2022 all rights reserved.