

#### Minimum Wage

- 2025 California minimum wage: \$16.50
- Several local ordinances also increase
- Minimum California exempt salary: \$68,640

**Next Steps:** Update minimum wage posters; audit salary levels for exempt employees.



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#### Fast Food and Health Care Minimum Wage

- Fast Food Workers 2025: TBD, possibly \$20.60
- Health Care Workers: Increases effective October 16, 2024, ranging from \$18 to \$23.



- California legislature introduced two bills, AB 2288 and SB 92.
- Governor signed the law, and it is effective July 1, 2024



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#### **PAGA Reform**

#### What is PAGA?

- This allows plaintiffs—and their for-profit attorneys—to seek millions in civil penalties for violations of the Labor Code & Wage Orders.
- These "civil penalties", which have a one-year statute of limitations, are assessed in addition to statutory damages.
- For example, a plaintiff might seek \$10 or \$20 in unpaid wages during a pay period, but also seek \$100 in PAGA penalties for the same violation.

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#### PAGA Reform

## How is PAGA a problem?

- Easy to file / allege violations.
- No arbitration.
- No class certification procedure
- Suing employee can pursue penalties even if not directly harmed by a violation.



- Is the new law good?
- Effective for claims filed on or after 6/19/24
- Only employees who actually suffered a violation, which occurred in the past year, can sue.
- Employers have the right to cure certain violations to avoid or reduce penalties.
- Courts empowered to manage or limit claims in lawsuit to prevent runaway claims.



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#### **PAGA Reform**

#### What are the changes?

- Penalties capped at 15% for employers who take "all reasonable steps to be in compliance <u>before</u> the employer receives a notice of violation or request for wage received. records.
- "Reasonable steps" include:
- Periodic payroll audits with corrections
- Compliant written wage-hour policies
- Wage hour training for supervisors
   Disciplining supervisors who violate the Labor Code



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# **PAGA Reform**

#### What are the changes?

- Penalties capped at 30% for employers who take "all reasonable steps to be in compliance within 60 days after receiving a notice of violation.
  - Key: Limited time to act after receipt of notice!



#### What are the changes?

- Reduced penalties for technical wage statement violations.
  - Reduced from \$100 per employee, per pay period to \$25.
  - Applies only if the employee could easily determine from the wage statement alone the required information (hourly rate of pay, hours worked, etc.)



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# **PAGA Reform**

# What are the changes?

- Reduced penalties for isolated errors
  - Violations that occurred over less than 30 consecutive days or 4 consecutive pay periods, the \$100 penalty is reduced to \$50.



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#### **PAGA Reform**

## What are the changes?

• Prevents "stacking" of penalties

 E.g. meal period violation cannot also lead to penalty for failure to pay all wages due at termination and failure to provide a compliant wage statement.



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#### What are the changes?

- Avoids unfair penalty for weekly payroll
  - Penalty awards cut in half for employers with weekly payroll.
  - Previously: the per employee, per pay period penalty structure unfairly doubled the penalties for employers with weekly payroll.



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## **PAGA Reform**

#### What are the changes?

- Additional cure rights starting 10/1/24
  - Small employers (100 or fewer employees) can send a cure plan to the labor agency within 33 days or receipt of notice, before a lawsuit is filed. If agency agrees, no lawsuit.
  - After a lawsuit is filed, employer of any size can request a stay of proceedings while the employer proposes a cure plan. (May include back wages, interest, liquidated damages, attorney fees and costs.)

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# PAGA Reform What should I do? Prevention/compliance matters more than ever! Get HR/legal help to ensure that you comply with California wage and hour laws. Common issues: Meal and rest breaks OT and OT rates Recording all hours worked Proper may stubs Proper "regular rate of pay" calculations (OT, meal, sick)

#### SB 399 - Captive Audience Meetings

- Limits an employers ability to communicate with employees regarding political or religious matters during mandatory meetings.
- "Political" includes union organizing. Possibly unconstitutional.

**Next Steps:** Refrain from mandatory meetings on such topics.



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# SB 1100 – Driver's Licenses

- Unlawful employment practice to include a statement that an applicant must have a driver's license
- Exceptions:
  - (1) job requires driving; and
  - (2) alternative form of transportation would not be comparable in travel time or cost to the employer.
- **Next Steps:** Update hiring forms and procedures.



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# AB 1870 – Updated Workers Compensation Poster

Requires workplace poster to notify employees of their right to consult a licensed attorney to advice them of their rights.



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Effective 1/1/25

Next Steps: Hang new poster.





#### AB 2123 - Paid Family Leave

- Eliminates employer's ability to require employees to use accrued vacation before accessing Paid Family Leave.
  - Previously could require use of 2 weeks

Next Steps: Update PFL policy.



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#### AB 2499 – Victims of Crime Leave

- Expands list of crimes employees can take time off for.
- · Allows use of paid sick leave.
- Eliminates 25 employee threshold
- Mandates written notice to all new hires, annually to all employees, and when known employee or family member is a victim.

**Next Steps:** Update crime victim leave policy and sick pay policy; look for new government brochure.



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#### SB 1137 – Intersectionality Discrimination

- FEHA clarified to prohibit discrimination on the basis of intersectionality (combination) of two or more protected traits.
- Legislature affirms the decision of the Ninth Circuit Court of Appeals in *Lam v. University of Hawai'i* (9th Cir. 1994)

**Next Steps:** Update anti-discrimination and harassment policies: "any combination of those characteristics."



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# SB 988 – Freelance Worker Protection Act

- Applies to freelance workers hired as bona fide independent contractors
- All contracts for a freelance worker's services in excess of \$250.00 must be in writing
- Freelance worker's must be **paid no later than 30 days** after they complete services
- Hiring party must retain the written contract for 4 years
- Hiring party cannot discriminate against the freelance worker for protesting violations of the Act/seeking to enforce it.



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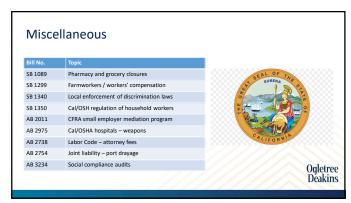
#### AB 1976 – Narcan in the Workplace

Requires Cal/OSHA to draft a rule requiring employers to include Narcan in first aid kits.
Shields those offering aid from liability.

Next Steps: Stand by for published rule.



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#### Heat Illness Prevention in Indoor Places of Employment

As of July 23, 2024, employers must have certain safety measures in place for indoor workplaces reaching 82°F to prevent worker exposure to heat illness, including:

- Providing fresh, suitably cool, free water
- Providing cool-down areas maintained below 82°F and shielded from other high-radiant heat sources
- Training supervisors to monitor for symptoms of heat-related illness
- Closely observing new workers working in hot areas during a 14-day acclimatization period, as well as all workers working during a heat wave



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#### Workplace Violence Prevention Program (WVPP)

- Non-Active Procedures
- Assessing workplace violence risks
   Create and distribute a written plan.
- Implementing strategies to reduce workplace violence
- risks (physical and procedures) – Annual training
- Annual training
   Investigating incidents and concerns
- Violent Incident Log
- Multi-Employer Worksites coordination

#### Active Procedures

- Alerts
- Evacuation or shelteringHow to obtain help during emergency
  - on to obtain help during energency

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# Expansion of Workplace Violence Temporary Restraining Order

- Existing California law enables employers to seek a temporary restraining order against an individual who has engaged in workplace violence or threats of violence against employees.
- Effective January 1, 2025, California law will also allow employers to seek a temporary restraining order against an individual who has harassed their employees.

# Harassment / Retaliation

# Bailey v. San Francisco Dist. Atty's Office (Cal Supreme Ct 2024)

- Co-worker used N-word racial slur. · HR refused to accept her complaint, but
- ultimately employer responded. • Supreme Court: One-time use of racial slur may be actionable if sufficiently severe.
- · Also: HR's initial response relevant to employer's potential liability.



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#### Harassment – Social Media

#### Okonowsky v. Garland (9th Cir 2024)

- Female staff psychologist at prison subjected to sexually offensive comments from male corrections officer, including on Instagram.
- Court: employer may be held liable for nonwork-related social media when causes consequence at work / hostile work environment.
- Consistent with recent EEOC Enforcement Guidance on Workplace Harassment



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## **Disability Accommodation**

# Miller v. Dept. of Corrections (Cal. App. 2024)

- Correctional officer injured on job.
- · Placed on LOA.
- · Offered to "medically demote" her to job she could perform; she declined.
- New claim: mental disability prevented her from working.
- Court: MSJ granted / upheld. No accommodation would have allowed employee to work.



#### **FMLA**

#### Perez v. Barrick Goldstrike Mines, (9th Cir 2024)

- Truck driver claims injured driving in mine.
- Off work 16 days
- Investigation concluded he was faking it, took time off to fix his rental properties. Fired.
- Jury: No liability.
- Ninth Circuit: Second medical opinion unnecessary; jury permitted to consider non-medical evidence that Perez didn't have a "serious health condition." •



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# Arbitration

#### Doe v. Second Street Corp. (Cal 2024 - unpublished)

- Federal EFAA (2022) rendered arbitration agreements unenforceable in sexual harassment cases.
- Q: Does mean that no arbitration for whole lawsuit, or just the harassment claim?
- A: The whole case escapes arbitration.



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## Frivolous Lawsuits?

**Q:** A former employee filed a frivolous discrimination lawsuit against my company. Can we sue him to recover fees and costs?

A: Probably not. Lawsuit must be "objectively frivolous."



- Neeble-Diamond v. Hotel California By The Sea, LLC



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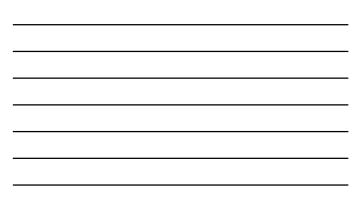
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