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NEWSALERT

Business and Economy

Top 10 California Laws, Regs for 2023

A SLEW OF new laws and regulations that affect California businesses are taking effect for 2023.

Last year was a busy one, with ground-breaking new laws on employee pay disclosures, a law prohibiting discrimination against cannabis-using employees and another expanding the circumstances when employees can take leave to care for a loved one.

The following are the top 10 laws and regulations that employers in the Golden State need to stay on top of.

- Conditions of disaster or extreme peril to the safety of persons or property caused by natural forces or a criminal act.
- An order to evacuate a workplace, worksite or worker's home, or the school of a worker's child due to a natural disaster or a criminal act.

1. Pay disclosure

This sweeping law in part requires more disclosure of pay information by employers. Until this year, employers had only been required to provide the pay scale for a position upon reasonable request by a job applicant. SB 1162 goes a step further by:

- Requiring employers, upon request by a current employee, to provide the pay scale of the position they are employed in.
- Requiring employers with 15 or more workers to include pay scale in any job postings for open positions.
- Requiring employers to maintain records of job titles and wage rate history for each employee while employed for the company, as well as three years after their employment ceases.

Note: The law defines "pay scale" as the salary or hourly wage range that the employer "reasonably expects" to pay for the position.

Penalties range from \$100 to \$10,000 per violation. This law took effect Jan. 1, 2023.

2. State of emergency and staff

This new law, SB 1044, bars an employer, in the event of a state of emergency or emergency condition, from taking or threatening adverse action against workers who refuse to report to, or leave, a workplace because they feel unsafe.

"Emergency condition" is defined as:

SB 1044 also bars employers from preventing employees from using their mobile phones to seek emergency assistance, assess the safety of the situation or communicate with another person to confirm their safety.

The law, which took effect Jan. 1, 2023, does not cover first responders and health care workers.

3. Cannabis use and discrimination

This law bars employers from discriminating in hiring, termination or other conditions of employment based on employees using cannabis while off duty.

The bill's author says the legislation is necessary because THC (tetrahydrocannabinol), the active ingredient in marijuana, can stay in a person's system after they are no longer impaired. As a result, drug testing may detect

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Law Bars ‘Discrimination’ Against Cannabis-Using Employees

THC in an employee’s system even if they used it weeks earlier and it is having no effect on their job performance.

AB 2188 does not require employers to permit employees to be high while working.

The bill would exempt construction trade employees and would not preempt state or federal laws that require employees to submit to drug testing. This law takes effect Jan. 1, 2024.

4. Leaves of absence

The California Family Rights Act and the state’s paid sick leave law allow employees to take leave to care for a family member, defined as a spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild or sibling.

The definition has been expanded to include “any individual related by blood or whose association with the employee is equivalent of a family relationship” as of Jan. 1.

5. Contractor workers’ comp

Starting July 1, the following contractors must carry workers’ compensation coverage regardless of if they have employees or not:

- Concrete (C-8 license),
- Heating and air conditioning (C-20),
- Asbestos abatement (C-22), and
- Tree service (D-49).

Starting Jan. 1, 2026, all licensed contractors must have coverage.

6. OSHA citation postings

Under current law, employers that receive citations and orders from OSHA are required to post them in or near the place the violation occurred, in order to warn employees about a potential hazard.

Starting Jan. 1, 2023, they must post the notice not only in English, but also: Spanish, Chinese (Cantonese, Mandarin), Vietnamese, Tagalog, Korean, Armenian and Punjabi.

7. Permanent COVID standard

Cal/OSHA has a permanent COVID-19 prevention standard that will sunset in 2024. The new standard, which replaces the temporary emergency standard the agency had implemented, should provide more certainty for prevention procedures and practices.

Here are the main takeaways:

- Employers are no longer required to pay employees while they are excluded from work due to COVID-19, or to screen employees daily.
- Employers must still notify and provide paid testing to employees who had a close contact in the workplace.

- Employers can now incorporate written COVID-19 procedures into their Injury and Illness Prevention Programs.

8. CalSavers expanded

SB 1126 requires any person or entity with at least one employee to either provide them with access to a retirement program like a 401(k) plan or enroll them in the state-run CalSavers program.

Prior to this new law only companies with five or more employees that do not offer a retirement plan were required to enroll their workers in CalSavers.

9. Bereavement leave

Employers with five or more workers are required to provide up to five days of bereavement leave upon the death of a family member, that came into effect on Jan. 1.

This leave may be unpaid, but the law allows workers to use existing paid leave available to them, such as accrued vacation days, paid time off or sick leave. Employers are authorized to require documentation to support the request for leave.

10. PFL wage replacement

This law was passed last year, but does not take effect until 2025. Existing California law allows employees to apply for Paid Family Leave and State Disability Insurance, both of which provide partial wage replacement benefits when employees take time off work for various reasons under the California Family Rights Act.

Starting in 2025, low-wage earners (those who earn up to 70% of the state average quarterly wage) will be eligible for a higher percentage of their regular wages under the state’s PFL and SDI benefit programs. ❖

SAVING FOR RETIREMENT: *If you have even one employee you are required to either provide them with access to a retirement program like a 401(k) plan or enroll them in the CalSavers program.*



Flood Insurance Considerations After Storms

THE ATMOSPHERIC river that pummeled California over three weeks in December and January caused an estimated \$30 million in insured damage, much of it from flooding.

With flooding events increasing nationwide, it's noteworthy that many companies located in or near flood zones do not carry commercial flood insurance, without which any damage their properties sustain won't be covered. Damage from flooding typically is not covered under a standard commercial property or a business owner's policy.

Companies located in flood plains will usually carry some flood insurance, but 30% of all floods in the U.S. occur outside such areas. As the recent storms illustrate, even businesses and homes located outside of flood plains are at risk.

What does flood insurance cover?

If your business is located in a high-risk flood area and you have a mortgage, you are likely required to purchase flood insurance. But as mentioned above, properties outside of designated flood zones can also flood.

Insurance covers damage to your building and contents caused by flooding. This includes losses resulting from water overflowing rivers or streams, heavy or prolonged rain, ocean storm surge, snow melt, blocked storm drainage systems, broken dams or levees, or other similar causes.

Also, damage from mold and mildew resulting from the after-effects of a flood may be covered.

On the other hand, if water comes from above – for instance from rain or melting snow overflowing gutters and leaking onto your inventory – your property policy may cover the damage.

What's my risk for flooding?

If you are not in a designated flood plain, the best general indicator for the risk you face is whether your commercial property is at ground level or on an elevation.

Location is the most important factor for weighing your risk. Is your business situated in or near a flood zone?

Flood map search tools can be found online.

If not in a flood zone, is it near the coast or a river, lake or stream? As seen in the past, even areas with low flood risk can also be inundated during particularly heavy storms.

Also consider in which parts of the building your business's equipment and inventory are located. Anything housed on a lower floor, for instance, would be at greater risk.

Where can I get coverage?

Flood insurance is available from the National Flood Insurance Program and some private insurers.

However, NFIP coverage can only be purchased through an insurance professional; you cannot buy it directly from the federal government.

Feel free to call us about your options and a review of your property.

Important: Typically, there's a 30-day waiting period from date of purchase before your policy goes into effect. This is to keep firms from purchasing a policy just before an expected deluge or when it looks like their property may imminently flood.

Limits

Commercial flood insurance premiums can cost a few hundred dollars a month up to several thousand dollars a year depending on the size of your facilities.

Policies typically provide up to \$500,000 of coverage for your building and up to \$500,000 for its contents.

You may be able to purchase additional insurance for catastrophic events. This type of coverage usually includes protection against business interruption.

Think ahead

While California has been in a drought and the storms are not enough to alleviate it completely, the wild weather this winter illustrates how unpredictable weather can flood properties that are not in designated flood zones. ❖



New Protections for Pregnant, Nursing Workers

IN THE WANING days of 2022, Congress passed a bipartisan \$1.7-trillion spending bill that includes legislation that expands rights for pregnant and nursing employees.

The budget bill, which President Biden has signed into law, included the Pregnant Workers Fair Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). Employers will need to adjust their policies to comply with these two measures.

The PWFA

This measure is modeled after the Americans with Disabilities Act and includes many of the same protections and steps employers must take if a pregnant employee asks for accommodations.

The law requires employers with 15 or more workers to make reasonable accommodations to limitations the worker conveys related to pregnancy, childbirth or a related medical condition.

Like under the ADA, employers are required to enter into an interactive process with an employee covered by the PWFA to determine what kinds of reasonable accommodations they need and the employer can provide (as long as it does not create an undue hardship on the employer).

The law also bars employers from requiring an employee covered by the PWFA to take paid or unpaid leave if another reasonable accommodation is available. Employers may also not retaliate, coerce, intimidate, threaten or interfere if any worker requests or is provided with a reasonable accommodation.

Relief Available under the PWFA

- Reinstatement
- Back pay
- Front pay
- Compensatory damages
- Punitive damages
- Recovering attorneys' fees

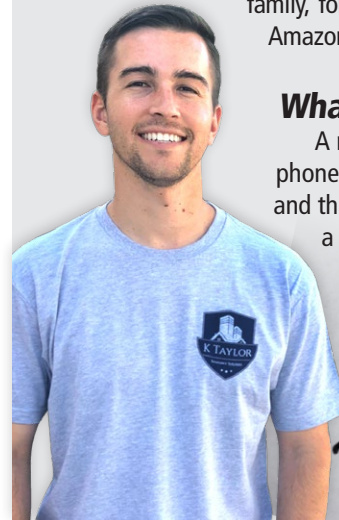
PUMP Act

This new law requires employers to provide employees who are nursing “reasonable time” and a private space to express milk.



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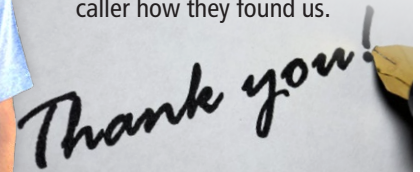
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The law expands on the Fair Labor Standards Act, which requires employers to provide nursing employees who are non-exempt under the FLSA with break time and a private space to express milk for one year after they give birth.

This new law expands the right to both exempt and non-exempt employees.

Firms with fewer than 50 workers can qualify for an exemption from the law if they can establish that complying would create an undue hardship (defined as creating significant difficulty or expense in relation to the business's size or financial resources).

Employees who are denied a private place and time to express milk must first notify their employer of its alleged failure.

If the employer doesn't remedy the situation within 10 days, the employee may commence an action against them and seek damages, including:

- Unpaid wages,
- Reinstatement,
- Back pay,
- Front pay, and
- Liquidated damages.

Your next step

You should update your company policies to ensure they are in compliance with the new laws.

Even though smaller employers can claim an exemption, it's smart business to try to accommodate pregnant workers, new mothers and lactating employees if possible.

You should also avoid taking adverse action against this new protected class. ❖