

# STAR STAFFING WEBINAR: LEGAL UPDATES Preparing for 2024

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December 6, 2023



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- Humor – To the extent that any humor is used or attempted in this presentation, it is not intended to offend anyone or indicate that we take any of the topics lightly.

# Agenda

- Minimum Wage Increase
- New Laws for 2024
- Notable Court Case and NLRB Decision
- Reminders – Existing laws and deadlines (including COVID-19 updates)
- Questions

# Minimum Wage Increase for 2024

- Beginning January 1, 2024, the state minimum wage for **all** employers will be **\$16.00 per hour**
  - Rate reflects a 3.5% increase from this year's minimum wage based on the law's provision that allows this increase if the national Consumer Price Index ("CPI") is over 7%
- Update minimum wage poster and other labor postings
- Check local minimum wage ordinances
  - If you have employees working in certain cities (generally 2hr/week) you need to comply with local minimum wage in that city
  - Examples: City of Santa Rosa - \$17.45/hour on 1/1/24

# Minimum Wage Increase – Effect on Salaried Employees

- Salary for exempt employees in CA must be at least 2x California state minimum wage for full-time employment
  - Calculate using 40 hrs/week = 2,080 hrs/year
- \$16.00/hr state minimum wage = **\$66,560/year minimum salary** for all exempt employees starting Jan. 1, 2024
- Minimum salaries are tied to the state minimum wage rate, not individual municipalities.

# New Laws for 2024

- Increase in Paid Sick Leave Amount
- Reproductive Loss Leave Required for All Employers with 5+ Employees
- Additional Restrictions on Cannabis Discrimination
- Presumption of Retaliation
- Noncompete Agreements
- Workplace Violence Prevention

# SB 616: Increase in Paid Sick Leave

*Amends § § 245.5, 246, and 246.5 of Labor Code*

- Starting January 1, 2024, the amount of paid sick leave that must be provided to employees under the Healthy Workplaces, Healthy Families Act will increase to 5 days, or 40 hours, per year
- Accrual rate is the same – 1 hour for every 30 hours worked
  - Must have available for use at least 40 hours of paid sick leave by the 200<sup>th</sup> calendar day of employment
  - Employees must be allowed to accrue up to at least 10 days, or 80 hours
  - Can limit use to 40 hours a year
- Ensure PTO policy complies with new requirements

# Reproductive Loss Leave (SB 848)

*Adds § 12945.6 to Gov. Code*

- Beginning January 1, 2024, employers with 5+ employees are required to provide 5 days of unpaid, protected leave for a reproductive loss event
  - Applies to all employees who have worked for the employer for at least 30 days
  - Do not have to take 5 days consecutively, but must be completed within 3 months of the reproductive loss event
  - Leave is available for each qualifying event, but can limit maximum amount to no more than 20 days in a 12-month period
- Definition of reproductive loss event includes: failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction



# Additional Restrictions on Cannabis Discrimination (SB 700) *Amends § 12954 to Gov. Code*

- Starting January 1, 2024, off-duty cannabis use will be a protected class under the state's Fair Employment and Housing Act law ("FEHA")
- Prohibits discrimination against an employee for: (1) off-duty cannabis use and (2) a drug test that is positive for non-psychoactive cannabis metabolites
- Employers may still prohibit on-duty possession, impairment or use; can still drug test to measure THC
- Does not apply to employees in the building and construction trades or those applying for positions that require a federal background check or positions where state or federal controlled substance checks are required

# Additional Restrictions on Cannabis Discrimination (cont.)

- Law has now been amended to include additional restrictions on cannabis discrimination that make it unlawful for employers to request information from a job applicant relating to the applicant's prior use of cannabis
- If information about an applicant's prior cannabis use comes up in a criminal background check, employers cannot ask about that information unless the employer is permitted to consider it under the background check laws (Government Code Section 12952)

# Presumption of Retaliation (SB 497)

*Amends §§ 98.6, 1102.5, and 1197.5 of the Labor Code*

- Starting January 1, 2024, if an employer takes any adverse action against an employee within 90 days of the employee engaging in protected activity, it will create a rebuttable presumption of retaliation under the law
- Potential civil penalty for violation is up to \$10k per employee
- “Protected activity” is defined broadly – includes employees who make an internal complaint about working conditions, wages, harassment, etc., an employee who files a suit or complaint with an agency against the company, and an employee who testifies in a proceeding against the employer

# Noncompete Agreements – Two New Laws

- Under existing law in California, noncompete agreements with employees are void and unenforceable
- Nonetheless, the state has passed two new laws regarding noncompete agreements that both go into effect on January 1, 2024
- **AB 1076** (amends Sect. 16600 and adds Section 16600.1 to the B&P Code): Confirms existing case law and voids all unlawful noncompete agreements contained in employment contracts
  - Employers must individually notify all current employees, and former employees, who were hired after January 1, 2022, whose employment contracts include a noncompete clause or who were required to sign a noncompete agreement that such clauses or agreements are void
  - The notice must be given in writing by no later than **February 14, 2024**

# Noncompete Agreements (cont.)

- **SB 699** (adds Sect. 16600.5 to the B&P Code): Confirms that all noncompete agreements are void and unenforceable regardless of where and when the contract was signed
  - Even if the contract was signed in another state with an employee who was working outside of California at the time, it cannot be enforced in California
  - The law makes it a civil violation for employers to enter into or try to enforce unlawful noncompete agreements
  - Gives employees the right to bring a civil action against an employer that attempts to enforce an unlawful noncompete / can seek damages and attorneys' fees

# Workplace Violence Prevention (SB 553)

- Starting July 1, 2024, all employers are required to establish and maintain a workplace violence prevention plan as part of their Illness Injury Prevention Plan (“IIPP”)
  - Employers must also record workplace violence incidents in a “violent incident log”
  - Employers must provide effective training to employees on the workplace violence prevention plan
- Employers should reach out to their workers’ compensation carrier for assistance with updating their IIPP

# Workplace Violence Prevention – Restraining Orders (SB 428)

- Under existing law, employers can seek a temporary restraining order (“TRO”) on behalf of an employee that has suffered violence or a threat of violence in the workplace
- Starting on January 1, 2025 employers can also seek a TRO on behalf of an employee who has suffered harassment
  - The law does not create a mandatory requirement for an employer to seek a TRO
  - Must give the employee the opportunity to decline to be named in the TRO before it is filed
- Harassment is defined as: knowing and willful conduct directed at a specific person that seriously “alarms, annoys, or harasses” the person and has no legitimate purpose; must be something that would cause “substantial emotional distress” both to a reasonable person and the actual employee

# Notable Court Case and NLRB Decision

- California Supreme Court – *Adolph v. Uber Technologies, Inc.*
- NLRB decision – *Stericycle, Inc. and Teamsters Local 628*





# *Adolph v. Uber Technologies, Inc.*

- California Supreme Court's response to last year's ruling by the U.S. Supreme Court in *Viking River Cruises v. Moriana*
- Disagreed with SCOTUS and held that when an employee files a PAGA action with both individual and representative claims, the individual claims can be compelled to arbitration but doing so will not strip the employee of standing to pursue the representative claims in court
- Employers can still enforce agreements requiring employees to arbitrate their individual claims, but it will not necessarily get rid of the PAGA claims (which are still not subject to arbitration)

# *NLRB decision – Stericycle, Inc. and Teamsters Local 628*

- NLRB stated that workplace policies cannot infringe on employees' rights under the NLRA, either directly or indirectly
- Includes policies that could discourage employees from engaging in protected activities under the NLRA
  - “Protected activities” include: the right to form or join unions, the right to engage in protected, concerted activities to address or improve working conditions, and the right to refrain from engaging in these activities
- Employers should review their handbooks and make sure policies are not drafted in a way that might “chill” employees' exercise of their rights under the NLRA

# Reminders – Existing Laws and Deadlines

- Expiring and Remaining COVID Regulations
- Harassment/Abusive Conduct Training
- Secure Choice Retirement Savings Program (CalSavers)
- Change in OT for Agricultural Employees

# AB685 Notice Provisions Expiring

- AB685 requires employers to provide written notice of COVID-19 exposure in the workplace to all employees within 24 hours of discovering the potential exposure
- This requirement expires on January 1, 2024
- Reminder: employers must keep record of all notices provided to employees under AB685 for 3 years

# Cal/OSHA Non-Emergency Regulations

- Cal/OSHA's Non-Emergency Regulations for COVID-19 took effect earlier this year on February 3, 2023
- The regulations will remain in place for 2 years, until February 2025
- All California employers must still comply with the regulations until then (regs and FAQs can be found on the DIR website)
- Still required to maintain a COVID Prevention Plan (CPP)

# Other COVID-19 Reminders

- Outbreak Definition Changed
  - Previously, the CDPH defined an “outbreak” as three or more COVID-19 cases among employees in an exposed group within a 14-day period
  - The new outbreak definition requires at least three COVID-19 cases within an exposed group during a 7-day period
- Masking is Still Required in Certain Situations in the Workplace
  - For close contacts, masks must be worn around others for 10 days following the last contact
  - If an employee who tests positive for COVID-19 returns to the workplace prior to the 10<sup>th</sup> day, they must wear a mask around others for 10 days following their first positive test (or start of symptoms)
  - In the event of an outbreak, all employees in the exposed group must wear a mask around others

# Harassment/Abusive Conduct Training

- Harassment/Abusive Conduct training required every 2 years for all employers with 5+ employees
  - 2 hours for supervisory employees and 1 hour for non-supervisory employees
  - CRD provides free online training on its website
- New employees/new supervisor must complete training within 6 months of hire/promotion
  - Employees who provide evidence that they received training in prior 2 years don't need to retake training with new employer

# Secure Choice Retirement Savings Program (CalSavers)

- 2016 Secure Choice Retirement Savings Program – Employers with 5+ employees must have private retirement plan, like 401k, OR enroll in CalSavers
- CalSavers is a state-run retirement savings program
- Employers are required to put a payroll arrangement into place that requires employees to contribute a portion of the wages to a retirement savings plan, unless they opt out
- Deadline to comply for employers with 5+ employees have passed
- Employers with 1-4 employees can register with CalSavers and have until December 31, 2025 to comply



# Change in Ag Overtime

- For employers with 26 or more employees, OT for ag workers is now 8 hrs/day and 40hrs/week
- The phase in for employers with 25 or fewer employees started on January 1, 2022 and continues in 2024 (see chart)

Overtime for Agricultural Employees – Employers with 25 or Fewer Employees				
	2022	2023	<b>2024</b>	2025
Daily Work	9.5	9	<b>8.5</b>	8
Work Week	55	50	<b>45</b>	40

# QUESTIONS?



# Thank you!

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