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Staying in the FAST Lane: An Overview of New 2023 Employment Laws for California Franchisors and Franchisees

By: [Thomas M. O'Connell](#), [Jennifer M. Misetich](#), and [Kathryn B. Fox](#)

Each New Year in California comes with several new laws that impact the workplace, including those in the franchising industry. With each year that passes, the California Legislature reminds us that their intent is to provide employees across our state with vast worker protections and rights, placing a greater burden on employers to maintain legal compliance. This year is no different. Below is a brief highlight of select new employment laws that took effect on January 1, 2023, unless otherwise noted.

Wage Transparency (SB 1162): California enacted the Pay Transparency Act, which requires employers with 15 or more employees to include a pay scale range for internal and external job postings. Employers of all sizes must retain records of job titles and wage rate history for all employees for the duration of their employment and for three years thereafter. The new law also mandates new reporting obligations for employers with 100 or more employees, which includes annual pay data reports showing pay differences between different groups of employees.

Bereavement Leave (AB 1949): The California Fair Employment and Housing Act (FEHA) now requires covered employers to provide up to five (5) days of bereavement leave to employees, and makes it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take such leave.

Workplace Safety (SB 1044): This bill adds a new chapter to the Labor Code entitled Workers' Rights in Emergencies, and prohibits employers, in an emergency condition, from taking or threatening adverse action against an employee for refusing to report to, or leaving, a workplace because the employee feels unsafe. This new law only applies to conditions of disaster or extreme peril, and not health pandemics.

Leaves of Absence (AB 1041): This bill expands the categories of individuals for whom an employee may take a leave of absence for under the California Family Rights Act (CFRA) and California's Healthy Workplaces Healthy Families Act (HWHFA). Under the amended CFRA, an employee may take unpaid leave to care for a "designated person" which is defined as "any individual related by blood or whose association with the employee is the equivalent of a family relationship." The amended HWHFA expands the definition of the term "family member" to include a person identified by the employee at the time the employee requests paid sick days.

Cal/OSHA Postings (AB 2068): Cal/OSHA citations, special orders, and actions are now required to be posted in the English version along with multiple language versions of the notification that Cal/OSHA will have prepared as applicable to the workplace. Cal/OSHA is required to prepare the notification in English

and in the top seven non-English languages used by limited-English-proficient adults in California, as determined by the most recent American Community Survey by the United States Census Bureau. If Punjabi is not included among these languages, Cal/OSHA shall also make the notification available in Punjabi.

Heat Illness and Wildfire Smoke (AB 2243): This bill amends Labor Code section 6721 to require Cal/OSHA, before December 1, 2025, to submit rulemaking proposals regarding new requirements for heat illness and wildfire smoke standards. The new proposed regulations would require employers to distribute copies of their Heat Illness Prevention Plan, to revise the wildfire smoke standard for farmworkers to require respiratory protection, and to consider regulations or revising existing regulations relating to protections pertaining to acclimatization to higher temperatures following an absence of a week or more from working in ultrahigh heat settings, including after an illness.

Cannabis Discrimination (AB 2188): The FEHA will prohibit employers from discriminating against applicants or employees because they have used cannabis off the job and away from the workplace or were found to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. However, employers still have the right to maintain a drug- and alcohol-free workplace. The law will take effect on January 1, 2024, giving employers time to update their policies and train personnel for the changes.

Contraceptive Equality (SB 523): California enacted the Contraceptive Equality Act of 2022, revising the FEHA to make it an unlawful employment practice for employers to discriminate against an applicant or employee based on "reproductive health decision-making." This bill also amends the California Government Code to require that most health benefit plans provide coverage for contraceptives and related services.

The Fast Act (AB 257): Last, but certainly not least, this groundbreaking law seeking to establish a fast food regulatory council to promulgate minimum standards for wages and working conditions was set to go into effect on January 1, 2023. However, a voter referendum blocked the new law, and the potential referendum challenge is set to be on the 2024 ballot. This law seeks to clarify joint liability between a franchisor and franchisee, and return the joint employer liability standard to the Obama-era NLRB rule, expanding joint employer to nominal entities or franchisors who do not exercise direct control over the primary employer or franchisee.

As always, our team stands ready to assist your business with all of its employment and franchising needs. If you have questions or need assistance, please feel free to contact the attorneys listed below.



[Thomas O'Connell](#)

Shareholder
(619) 219-6330
toconnell@buchalter.com



[Jennifer Misetich](#)

Shareholder
(213) 891-5049
jmisetich@buchalter.com



[Kathryn Fox](#)

Senior Counsel
(619) 219-5371
kfox@buchalter.com

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