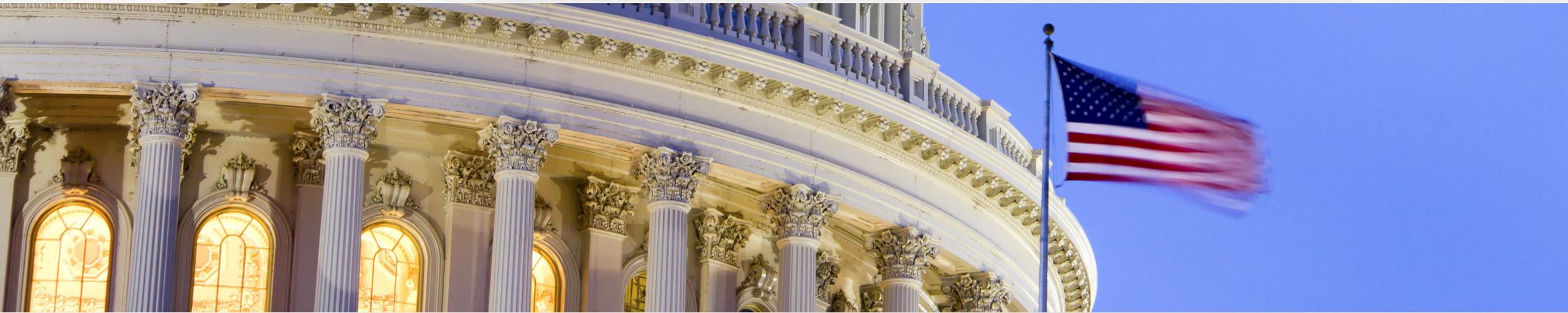


**Today's webinar will
begin shortly. We are
waiting for attendees
to log on.**

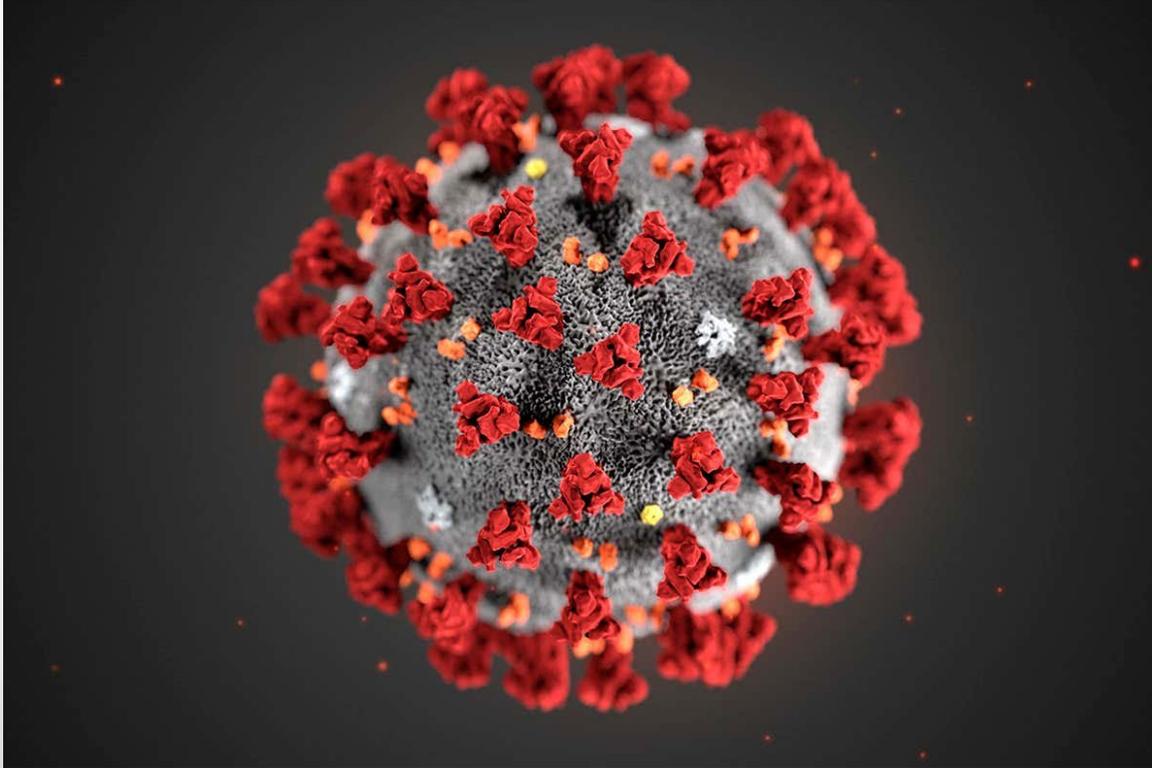
California Legislative and Case Law Update - 2020



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COVID-19 and the California Legislature



- Legislature recessed for several months due to COVID-19
- Shortened timelines for hearing bills
- Limited number of bills – only about 25% of normal volume of bills moved this year
- Governor signed/vetoed bills up to September 30

Governor Newsom and Local Governments Picked Up The Slack

- With Legislature recessed, Governor Newsom issued several Executive Orders
- Many local governments passed COVID-19 paid sick leave and other employment ordinances



New Mandates From Sacramento



SB 1383 – CFRA Expansion

- Originally part of Governor Newsom's budget proposal
- Continuation of debate over recent years
- One of the few bills not directly related to COVID-19
- Employer concerns, especially on heels of COVID-19 crisis



SB 1383 – CFRA Expansion

- Extends CFRA to apply to employers with **five or more** employees (from 50 or more)
- Eliminates requirement for certain number of employees within 75-mile radius
- Expands **“family members”** to include adult children, siblings, grandparents, grandchildren
- Potential stacking issue with FMLA
- Eliminates “two employees at same employer” rule
- Eliminates “key employee exemption” to reinstatement provisions

SB 1159 – Workers' Compensation Presumption



- Subject of COVID-19 Executive Order
- One of the hot issues when Legislature returned – multiple bills regarding this subject
- Ultimately, the bill that was signed was SB 1159
- Went into effect ***immediately***

SB 1159 – Workers’ Compensation Presumption

The law has three parts:

1. Codifies E.O. that ran through July 5, which stated:
 - COVID-19 is presumed to be covered by W/C if infected employee tests positive or is diagnosed within 14 days of their last day worked outside the home
 - Physician diagnosis must be confirmed by a test within 30 days
 - Presumption is **rebuttable** by evidence, but the claim must be denied **within 30 days** to be eligible for rebuttal
2. Extends the above for first responders and healthcare providers so that the E.O. provisions bridge beyond July 5 for those groups

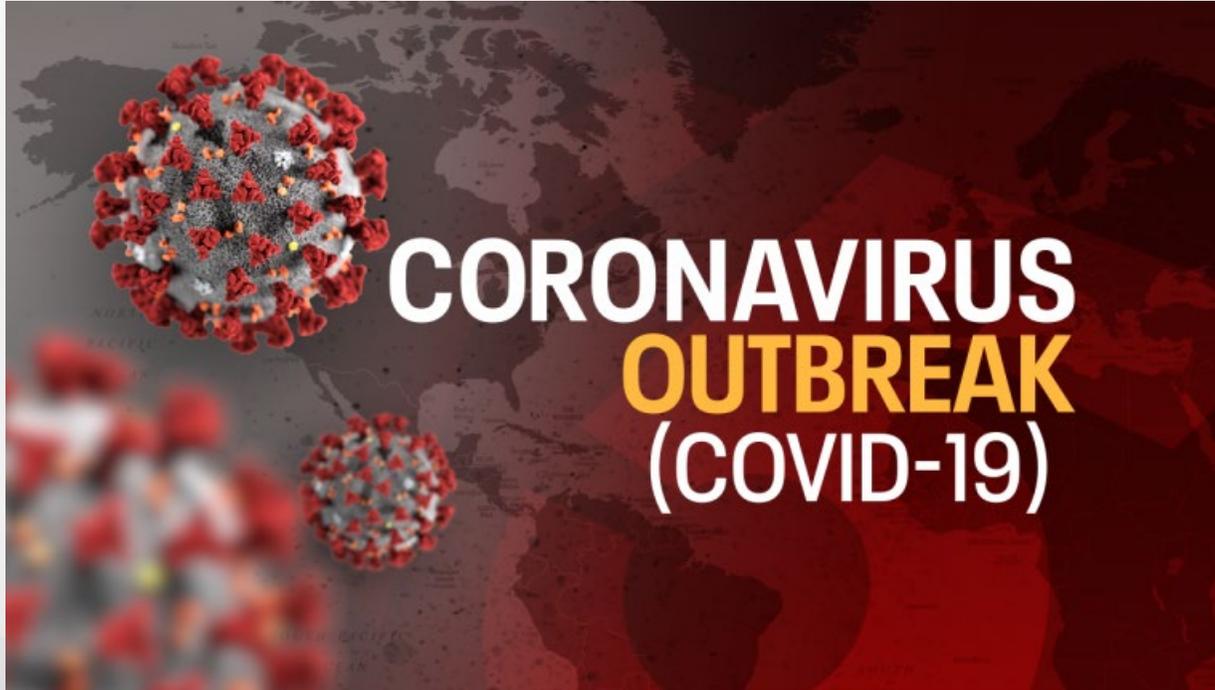
SB 1159 – Workers’ Compensation Presumption

3. Creates a new rebuttable presumption for cases occurring on or after July 6 but only where the employer had an “outbreak”

An “outbreak” is:

- 4 positives in 14 days if 100 employees or less;
 - 4 percent of employees if over 100; or
 - Closure by public health authorities
- Workers’ compensation carrier reporting requirement when employee tests positive for COVID-19
 - Must report within three (3) business days (plus “look back” reporting period for positive tests from July 6 through 30 days of effective date of bill)

AB 685 – COVID-19 Reporting Obligation



- Legislation introduced following some highly-publicized “outbreaks” where employers were alleged to have not informed employees
- Imposes some significant and **complex** notice requirements that go into effect on **1/1/2021**

AB 685 – What Triggers the Notice?

Employers are required to provide notice ***within one (1) business day*** when they receive “**notice of a potential exposure.**”

- Notification from a public health official or medical provider that an employee was exposed to a **qualifying individual** at work
- Notification from the employee or their emergency contact that they are a **qualifying individual**
- Notification through employer’s testing protocol that they are a **qualifying individual**
- Notification from a subcontracted employer that a **qualifying individual** was on the worksite

AB 685 – Definition of “Qualifying Individual”

A “qualifying individual” includes:

1. Laboratory-confirmed case of COVID-19;
2. Positive COVID-19 diagnosis from a licensed health care provider;
3. COVID-19 related order to isolate from a public health official; or
4. Died from COVID-19

AB 685 – Notice Requirements - Employees and Employees of Subcontractors

- 1) Must give notice to employees (and any employees of subcontractors) **who were on the premises** at the same worksite as the qualifying individual **that they may have been exposed**.
- 2) Must give notice to employees (and any employees of subcontractors) **who may have been exposed** regarding COVID-19 related benefits they might be entitled to under federal, state and/or local law.
- 3) Must provide notice of disinfection and safety plan employer plans to implement compliant with CDC guidelines.

AB 685 – “Outbreak” Notice to Local Public Health Agency

*If number of cases meets the definition of an “**outbreak**” (generally 3 cases) must notify local public health agency of the following **within 48 hours**:*

- Names of employees
- Number of employees
- Occupation and worksite of employees
- Business address and NAICS code of the worksite

Must also notify local public health agency of any subsequent cases.

AB 2992 – Victims of Crime

- Amends existing law (Labor Code 230 and 230.1) providing job-protected time off for employees who are victims of domestic violence, sexual assault or stalking to include:
 - A victim of a crime that caused physical injury or mental injury or threat of physical injury.
 - The immediate family member (child, parent, spouse, sibling, or “equivalent”) of a person who is deceased as the direct result of a crime.

AB 2257 – AB 5 Follow-Up

- Debate continues regarding additional exemptions to independent contractor (“ABC Test”) analysis
- Many proposed bills not heard



AB 2257 – AB 5 Follow-Up

- This year, **AB 2257** (which went into effect immediately on 9/4/2020) made a number of changes to the exemptions under AB 5:
 - There are now **109 exemptions** from the ABC test
 - Key changes to the “**business-to-business**” exemption:
 - May provide services to client as long doing so under the name of the business service provider and the business regularly contracts with others
 - Must show business service provider “can” contract with others and “can” maintain a clientele of their own
 - Key changes to the “**referral agency/service provider**” exemption:
 - Non-exclusive list of industries the exemption can apply to
 - But now specifically excludes janitorial, delivery, courier, transportation, trucking, agriculture, retail, logging, in-home care, construction, or any high-hazard industry

AB 1947 – DLSE Retaliation Claims

- Extends deadline for filing a retaliation claim under Labor Code 98.7 with DLSE from 6 months to **one year**
- Authorizes one-sided, **plaintiff-only** attorney's fees for Labor Code 1102.5 (whistleblower) claims
 - Increases the stakes for such claims
 - More expensive to settle
 - More likely to be filed in court

SB 1384 – Arbitration of DLSE Claims

- An employee who is unable to have their claim adjudicated by DLSE because of an order to compel arbitration can request that the **Labor Commissioner** represent them in the arbitration
- A petition to compel arbitration of a claim pending under Labor Code 98, 98.1 or 98.2 must be **served** on DLSE
- If requested by the employee, Labor Commissioner may represent employee in proceedings to determine **enforceability** of the arbitration agreement (whether in court or arbitration)

AND WHAT ABOUT THESE NEW CASES?



McPherson v. EF Intercultural Foundation *Unlimited Vacation Policies*

- **Summary:** *Typically, unlimited vacation policies need not be paid out on separation. In case of first impression, the court held that some “unlimited” vacation policies do need to be paid out.*



McPherson v. EF Intercultural Foundation

Unlimited Vacation Policies

- **Practical Implications:**
- The court offered suggestions for an enforceable written unlimited vacation policy, including that the policy:
 1. Be in writing;
 2. Clearly provide that employees' ability to take paid time off is not a form of additional wages for services performed, but perhaps part of the employer's promise to provide a flexible work schedule – including employees' ability to decide when and how much time to take off;
 3. Spell out the rights and obligations of both employee and employer and the consequences of failing to schedule time off;
 4. Allow sufficient opportunity for employees to take time off, or work fewer hours in lieu of taking time off; and
 5. Is administered fairly so that it neither becomes a de facto 'use it or lose it policy' nor results in inequities, such as where one employees works many hours, taking minimal time off, and another workers fewer hours, and takes more time off.



Frlekin v. Apple Inc. **Compensable Work Time**

- Class action on behalf of current and former Apple employees.
- Issue: was time spent undergoing exit searches as part of Apple's theft-prevention program compensable?
- Factors the court considered: most employees bring personal items to work (e.g., cell phones) even if it is voluntary to do so; employees had to find security guard and remain at work for search; employees were subject to discipline if they did not comply, etc.
- **Takeaway:** Exit search time was compensable.

Oliver v. Konica Minolta Bus. Sols. U.S.A., Inc.

Commute Time

- Class action brought by service technicians required to drive personal vehicles containing the employer's tools/parts to customer sites to make repairs.
 - Court analyzed whether commute time to first site of the day and back home after last site of the day was compensable.
- Court provided framework for determining whether employees were under employer's control during commute:
 - Whether circumstances restrict employees' ability to use commute time as they want (e.g., dropping off kids at school, picking up breakfast on their way to work, etc.).
- **Takeaway:** If so restricted, time likely going compensable work time and mileage must be reimbursed.

Noori v. Countrywide Payroll & HR Staffing Solutions, Inc.

Pay Stub Requirements

- Plaintiff sued former employer, alleging violation of Labor Code § 226(a) by providing wage statements bearing the acronym “CSSG” instead of the “name . . . of the legal entity that is the employer” and PAGA claims.
- Though § 226 allows employer to use limited alterations of legal name and fictitious business names, “severe truncations or alterations” that have potential to cause confusion among employees do not comply.
- Court also held PAGA notice, which referred to Lab. Code provisions that could not be cured instead of the ones at issue (which were curable), was adequate because:
 - (1) Notice provisions don’t require employer to be informed of the right to cure; and
 - (2) Notice was otherwise compliant.
- **Takeaway:** Ensure compliance with Labor Code § 226.

David v. Queen of the Valley Medical Center Meal & Rest Break Requirements

- Plaintiff sued employer for failure to pay meal/rest period premiums and failure to pay minimum wage, based on a time rounding theory.
- MSJ properly granted on meal/rest period claims because employer did not have actual or constructive knowledge that breaks were interrupted by work-related discussions.
 - Rounding practice was neutral.
- **Takeaways:**
 - Time rounding policies should be carefully implemented.
 - Review meal/rest period policies.

Reminder – State Minimum Wage Increase

Effective Date	Minimum Wage for Employers With 25 or Less Employees	Minimum Wage for Employers With 26 or More Employees
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.00/hour	\$15.00/hour



QUESTIONS?

Thank You



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CALIFORNIA MINIMUM WAGE CHART 2020

yellow background indicates locality has a local paid sick leave law

Locality	As of 1/1/20	As of 7/1/20	Effective 1/1/2021
CALIFORNIA	\$12 (<25 EEs) \$13 (26+ EEs)		\$13 (<25 EEs) \$14 (26+ EEs)
Alameda	\$13.50	\$15	
Belmont	\$15		\$15.90
Berkeley	\$15.59	\$16.07	
Cupertino	\$15.35		CPI
Daley City	\$13.75		\$15.00
El Cerrito	\$15.37		CPI
Emeryville	\$16.30	\$16.84	
Fremont	\$13.50 (25+ EEs) state rate (<25 EEs)	\$15 (26+ EEs) \$13.50 (<25 EEs)	\$15
Half Moon Bay			\$15
Hayward			\$14 (<25 EEs) \$15 (26+ EEs)
Long Beach Hotel & Concessions at Long Beach Airport/Convention Center *	\$14.97 (hotel) \$14.72 (concession)	\$15.47 (hotel) \$15.30 (concession)	
Los Altos	\$15.40		CPI
Los Angeles (City)**	\$14.25 (26+ EEs) \$13.25 (<25 EEs)	\$15 (26+ EEs) \$14.25 (<25 EEs)	
Los Angeles (City) (for hotels w/ 150+ rooms)	\$16.63	\$17.13	
Los Angeles (County, unincorporated)	\$14.25 (26+ EEs) \$13.25 (<25 EEs)	\$15 (26+ EEs) \$14.25 (<25 EEs)	\$15
Malibu	\$14.25 (26+ EEs) \$13.25 (<25 EEs)	\$15 (26+ EEs) \$14.25 (<25 EEs)	
Menlo Park	\$15		CPI
Milpitas	\$15	\$15.40	
Mountain View	\$16.05		CPI
Novato		\$15 (100+ EEs) \$14 (26-99 EEs) \$13 (1-25 EEs)	\$15 + CPI (100+ EEs) \$15 (26-99 EEs) \$14 (1-25 EEs)
Oakland	\$14.14		CPI
Oakland (for hotels w/ 50+ rooms)	\$15.00 (w/ benefits) \$20.00 (w/o benefits)	\$15.37 (w/ benefits) \$20.50 (w/o benefits)	
Palo Alto	\$15.40		CPI
Pasadena	\$14.25 (26+ EEs) \$13.25 (<25 EEs)	\$15 (26+ EEs) \$14.25 (<25 EEs)	
Petaluma	\$15 (26+ EEs) \$14 (<25 EEs)		\$15
Redwood City	\$15.38		CPI
Richmond	\$15		CPI
San Carlos			CPI
San Diego	\$13		CPI
San Francisco	\$15.59	\$16.07	
San Jose	\$15.25		CPI
San Leandro	\$14	\$15	
San Mateo	\$15.38		CPI
Santa Clara	\$15.40		
Santa Monica	\$14.25 (26+ EEs) \$13.25 (<25 EEs) \$16.63 (hotel)	\$15 (26+ EEs) \$14.25 (<25 EEs) Hotel aligned to City of LA Hotel Wage	
Santa Rosa		\$15 (26+ EEs) \$14 (<25 EEs)	CPI
Sonoma	\$13.50 (26+ EEs) \$12.50 (<25 EEs)		\$15.00 (26+ EEs) \$14.00 (<25 EEs)
South San Francisco	\$15		CPI
Sunnyvale	\$16.05		CPI

*Long Beach has a PSL ordinance that applies to hotel workers only

**Los Angeles has a separate PSL ordinance for hotel workers