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2024 Agricultural Employment Legislative & Regulatory Update

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What Are We Talking About Today?

- New Legislation for 2024
- New, Pending, Future Regulations
- SB 553 Workplace Violence Requirement



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New Legislative Mandates for 2024

- Expanded Paid Sick Leave (SB 616)
- Workplace Violence Plan requirement (SB 553)
- Reproductive Loss Leave (SB 848)
- Employment Discrimination: Cannabis Use (AB 2188/SB 700)
- Rebuttable Presumption of Retaliation (SB 497)
- DAs Enforcing Wage Theft (AB 594)



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Expanded Paid Sick Leave

- Increases minimum PSL employers must provide from 24 hours/three days to 40 hours/five days
- Raises annual usage cap from 24 hours/three days to 40 hours/five days
- Increases amount employers must allow employees to accrue and carry over from year-to-year from 48 hours/six days to 80 hours/ten days
- Minimum accrual rate: 1 hour/30 hours worked



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Expanded Paid Sick Leave

- Alternative accrual rate OK, as long as:
 - Employees accrue 24 hours by the 120th day of employment
 - 40 hours/five days by the 200th day of employment
- Continues to permit front-loading of paid sick leave at beginning of employment, employment anniversary/calendar year
- Continues to prohibit employers from seeking verification that PSL is actually being used for its intended purpose
- Continues allowance to fold PSL into PTO



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General Industry Workplace Violence Reduction Plan Requirement

- WPV plan must be in place by 7/1/24
- May be a separate plan; may be integrated into IIPP
- More on this later...



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Reproductive Loss Leave

- Five or more employees
- Available to employees employed 30 days or more
- Adds to existing Bereavement Leave requirement



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Reproductive Loss Leave

- Up to five days following a “reproductive loss event:”
 - Failed adoption
 - Failed surrogacy
 - Miscarriage
 - Stillbirth
 - Unsuccessful assisted reproduction



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Reproductive Loss Leave

- Five days need not be taken consecutively, but leave must be completed within three months of the event
- If more than one event occurs in a 12-month period employer may, but is not required, to grant up to 20 days of leave
- Employees may use vacation/PSL/PTO if employer's policy calls for unpaid leave
- Retaliation for use prohibited



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Cannabis Use Employment Discrimination

- Prohibits employment discrimination based on use:
 - Off the Job
 - Away from the Workplace
- Can still do screening that does not test for non-psychoactive cannabis metabolites
- Prohibits an employer from asking an applicant about prior use
- Allows an employer to prohibit on-the-job use or impairment
- Does not prohibit DOT testing



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Rebuttable Presumption of Retaliation

- Adverse employment action (discipline, termination) presumed retaliatory if occurring within 90 days of an employee engaging in “protected activity:”
 - Complaining about unpaid wages to the Labor Commissioner
 - Reporting suspected unlawful activity in the workplace
 - Complaining about equal pay violations
- Employer can overturn presumption by articulating a legitimate nonretaliatory reason for the disciplinary action
- If employer is unsuccessful, employee is awarded up to \$10K/violation
- Increases the value of documentation of non-retaliatory reasons for discipline/termination



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DAs Enforcing Wage Theft

- Allows the Attorney General, District Attorneys and city and county prosecutors to independently pursue civil or criminal violations of the Labor Code
- Prohibits arbitration agreements from restraining public prosecutors
- May be challenged as being preempted by federal law (Federal Arbitration Act)



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Indoor Heat Illness

- **Outdoor** standard (8 CCR 3395) applies to **outdoor places of employment**
- **Indoor heat safety** – Injury & Illness Prevention Program (IIPP) Standard (8 CCR 3203)
- Cal/OSHA proposes revised **Indoor Heat Illness Standard** August 2023
 - Several 15-day comment periods; problems still not fixed
 - Exemptions for A/C vehicles, storage containers for less than 15 min./hour not available if temp exceeds 95°F
 - Standards Board expected to approve at March 2024 meeting



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Indoor Heat Illness

- **“Indoor”** means a space under a ceiling or overhead covering that restricts airflow and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed.
- Requires access to water and cool-down areas at all time when temperature exceeds 82°F



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Indoor Heat Illness – Proposed Standard

- **Additional assessment and control requirements** when temperature equals or exceeds **87° F**
 - Measurement & recording of temperature and heat index (whichever is higher) including date, time, location at times when employee exposures are expected to be greatest
 - Repeat measurement when temperature “reasonably expected” to be 10° F + greater



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Indoor Heat Illness – Proposed Standard

- **Additional assessment and control requirements** when temperature equals or exceeds **87° F**
 - Use engineering to lower the temperature to below 87° F where employees are present, or below 82° F where employees wear clothing that restricts heat removal
 - Use administrative controls or personal protective equipment to reduce risk of heat exposure where engineering controls are infeasible



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Indoor Heat Illness – Proposed Standard

- **Additional assessment and control requirements** when temperature equals or exceeds **87° F**
 - Create and maintain emergency response and employee monitoring procedures
 - Implement procedures when employees exhibit signs of heat illness
 - Create and implement (when appropriate) procedures for close observation during 14-day acclimatization period or a heat wave (when the temperature exceeds 80° F and 10° hotter than the average for the five prior days)



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Indoor Heat Illness – Proposed Standard

Exceptions:

- Remote workers
- Shade provided per outdoor heat illness standard
- Exceptions for A/C vehicles or storage containers up to 15 min./hour unless temp. exceeds 95° F



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Indoor Heat Illness – Proposed Standard

Exceptions:

- ERs may choose to comply with the Indoor Standard (not the Outdoor Standard) when employees move regularly from indoor to outdoor locations



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Indoor Heat Illness – Proposed Standard – Major Elements

- **Written Program:** detailing procedures for accessing water and cool-down areas, hazard assessment control measures, acclimatization, and emergency response
- **Training:** for employees and supervisors
- **Cool-Down Areas:** maintained below 82°F, blocked for sunlight and radiant heat sources



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Indoor Heat Illness – Proposed Standard – Major Elements

- **Rest Periods:** allow and encourage employees to take preventative cool-down rest periods and monitor for heat illness symptoms
- **Acclimatization:** closely observe new employees for 14 days, all employees during a heat wave if no engineering controls are present



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Silica ETS & Lead Exposure

- **Silica ETS:**
 - Protect employees cutting and polishing artificial stone in the countertop industry
 - Standards Board approved an Emergency Temporary Standard in July
 - Draft released in September
 - Board approved in December
- **Lead Exposure:**
 - 4-fold reduction in current allowable blood lead level, based on 40-year-old toxicity data
 - Board vote anticipated early in 2024



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COVID-19 Non-Emergency Rule

- Effective 2/3/23 thru 2/3/25 (recordkeeping for an additional year)
- Cal/OSHA has furnished Fact Sheets, FAQ, and model program
- CDPH isolation/exclusion period update (January 2024):
 - Infected employee may return if 24 hours have passed with no fever w/o use of fever-reducing meds and symptoms are mild & improving
 - No isolation or exclusion required for asymptomatic cases
 - Testing now required only for people w/new COVID symptoms or close contacts who are at risk in severe disease or who have contact with someone at risk of severe disease
 - Testing still required during outbreaks; employees refusing testing must be excluded for 24 hours
 - Employers must provide face coverings when/if CDPH requires use or returning workers for 10 days after appearance of symptoms or positive test



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General Industry Infectious Disease Standard

- Intended to replace the COVID-19 non-emergency standard, with broader scope
- No known timeline for a draft reg
- Unknown if it will look more like the Aerosol Transmissible Disease Standard (healthcare oriented) or like the COVID-19 standard
- What infectious diseases will be covered?



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SB 553 Workplace Violence Plan Requirement

Virtually all employers required to establish, implement and maintain an effective Workplace Violence Prevention Plan by July 1, 2024, except:

- Facilities covered by Healthcare WPV;
- Facilities covered by Dept. of Corrections & Rehabilitation
- Law Enforcement agencies
- Employees working remotely
- Workplaces not publicly accessible, 10 or fewer employees, in compliance with IIPP



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SB 553 Workplace Violence Plan Requirement

“Workplace violence:” any act of violence or threat of violence that occurs in a place of employment; includes, not limited to:

- Threat or use of physical force resulting in, or having a high likelihood of resulting in, injury psychological trauma, or stress (whether or not the employee sustains an injury)
- Incident involving the threat or use of a firearm or other dangerous weapon, including use of common objects as weapons (regardless of whether the employee sustains an injury)



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SB 553 Workplace Violence Plan Requirement

- **“Threat of Violence:”** any verbal or written statement, including texts, electronic messages, social media messages, online posts or any behavioral or physical conduct that conveys or reasonably could be perceived to convey intent to cause or place someone in fear of physical harm, and that serves no legitimate purpose
- **Workplace violence does not include lawful acts of self-defense or defense of others**



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SB 553 Workplace Violence Plan Requirement

Types of Workplace Violence: important for training, hazard evaluation, incident recording;

- **Type 1:** committed by a person who has no legitimate business at the worksite, including violent acts by anyone to enters with intent to commit a crime
- **Type 2:** directed at employees by customers, clients, or visitors
- **Type 3:** committed against employees by current or former employees, supervisors or managers
- **Type 4:** committed in a workplace by someone who does not work there but or had a personal relationship with an employee



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SB 553 Workplace Violence Plan Requirement

Plan Overview:

- May be part of an IIPP, or established and maintained separately
- Create and maintain records of workplace violence, hazard identification, evaluation, correction and investigation
- Violent Incident Log
- Employer/supervisor training



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SB 553 Workplace Violence Plan Requirement

Required Plan Elements:

- Names/Job titles of person(s) responsible for implementing and maintaining the plan
- Effective procedures to obtain active involvement of employees (and unions)
- Methods employer will use to coordinate implementation of the plan in conjunction of other on-site employers
- Effective procedures to accept and respond to reports of WPV and prohibit retaliation against employees reporting WPV
- Procedures to ensure employee/supervisor compliance



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SB 553 Workplace Violence Plan Requirement

Required Plan Elements:

- Procedures to communicate about WPV-related matters
- Effective procedures to respond to actual or potential incidents
- Procedures to develop and provide training
- Procedures to identify and evaluate workplace violence hazards
- Procedures to correct workplace violence hazards



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SB 553 Workplace Violence Plan Requirement

Required Plan Elements:

- Procedures for post-incident response and investigations
- Procedures to review plan effectiveness and revise as needed



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SB 553 Workplace Violence Plan Requirement

Violent Incident Log: employer must record information for each workplace violence incident, including:

- Date, time location
- Classification of who committed the violence
- Classification of the circumstances at the time of the incident
- Classification of where the incident occurred
- Type of Incident
- Consequences of Incident
- Information about person logging the incident



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SB 553 Workplace Violence Plan Requirement

Employee/Supervisor Training:

- Initial training when plan is first established and annually thereafter
- Additional training when new or previously unrecognized hazard is identified, and changes are made accordingly
- Must include opportunity for interactive Q&A with a knowledgeable person



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SB 553 Workplace Violence Plan Requirement

Employee/Supervisor Training must cover:

- The features of the plan, how to obtain a copy and how to participate in developing and implementing it
- Definitions and requirements of the law
- How to report incidents or concerns to the employer or law enforcement without fear of reprisal
- WPV hazard specific to employees' jobs
- How to seek assistance to prevent or respond to violence
- Strategies to avoid physical harm
- The violent incident law and how to obtain copies of records



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SB 553 Workplace Violence Plan Requirement

Recordkeeping:

- Maintain hazard identification, evaluation and correction for five years
- Maintain violent incident logs for five years
- Maintain training records for one year
- Maintain incident investigations for five years
- Records for hazard identification, violent incident logs and training records must be provided to employees and their representatives within 15 calendar days



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SB 553 Workplace Violence Plan Requirement

Cal/OSHA Regulation:

- Directs Cal/OSHA to propose additional regulation no later than 12/31/25, to be adopted by the Standards Board no later than 12/31/26
- Must include requirements outlined in SB 553 and “any additional requirements the Division deems necessary and appropriate to protect employees’ health and safety”
- An advisory committee meeting is expected soon



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Litigation Updates: *Adolph v. Uber*

- Issue: who may bring a PAGA action? What happens if an employee signed a valid arbitration agreement?
- California Supreme Court says: even if an employee signed a valid arbitration agreement, the employee's individual PAGA claim may proceed in arbitration, and the collective "aggrieved employee" claim may afterwards continue in Court. Keeps PAGA very much alive.
- *Get your arbitration agreements reviewed now!*



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Litigation Updates: *Thai v. IBM*

- Issue: are employee expenses incurred because of the COVID-19 pandemic reimbursable?
- Yes! Employers must pay for expenses the employee incurs related to the discharge of their duties, whether “directly caused” by the employer or not.
- *Review what expenses employees have—cell phone? Mileage? Laptops?*



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Litigation Updates: *Camp v. Home Depot (Pending in CA Supreme Court)*

- Issue: is a rounding policy lawful?
- California Supreme Court picked up for review. Trial Court granted Summary Judgement in favor of employer (Employer Win) holding the rounding policy was neutral.
- *Concern is that California Supreme Court may invalidate or further constrain rounding policies—revisit yours now with counsel.*



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Thanks for Your Time & Attention!

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