



## Understanding Employment Law Trends to Keep Pace with the Evolving California Workplace

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In our socially, legally and politically evolving landscape, staying ahead of employment law trends cultivates a collegial work environment (both remote and in-person) that will improve employee retention and foster the growth of the enterprise. Companies should understand not just the substance of new employment laws but also, the spirit behind these laws.

The coronavirus pandemic has altered the lives of people and industries on a global basis. Companies were forced to shut down completely or to push forward in the face of diminished profits and serious potential health and safety risks. Employees continue to need work flexibility to deal with illnesses, school closures, as well as economic and food insecurity. Businesses continue to be significantly burdened in providing this flexibility. Now, more than ever, employers need a legal partner to assist with navigating changing regulations, supporting their employees, and ensuring their businesses are profitable and survive this storm.

### **Businesses Should Be Prepared for Additional Employee Time Off Requests**

California greatly expanded the protections under the existing California Family Rights Act ("CFRA") and now requires employers with just five employees to provide up to twelve weeks of job-protected leave (SB1383). This is a drastic deviation from prior CFRA requirements, which denied protection to employees employed at small businesses with less than 50 employees. The law takes effect on January 1, 2021, and will require small employers to provide CFRA leave to employees who are unable to work because they or a qualified family member has a serious health condition, to bond with a new child, or due to a qualifying exigency related to active duty in the armed forces. Employees who take leave under the CFRA must (with some exceptions) be returned to their previous position at the end of their leave. Smaller employers with five to forty-nine employees will no longer be able to avoid CFRA based on their size. This reinforces the legislative trend in California to nurture better work-life balance for employees, recognizing the unique personal obligations that employees experience outside of work.

This trend is similar to many of the leave laws enacted in response to the pandemic, including the recent expansion of California's COVID-19 paid sick leave requirements, which now require employers with 500 or more employees to offer time off to their employees (the law previously applied to employers with 500 or less employees). Now small and large employers in the state of California must provide up to 80 hours of paid sick leave for employees affected by COVID-19. This is in addition to the twelve weeks of CFRA leave that nearly all California employers must now provide. While paid sick leave requirements are set to expire on December 31, 2020, they likely will be extended into the New Year.

As this gauntlet of a year ends, California employers must prepare for the demands of leave obligations in ways that were never previously required. Employers should focus on updating their policies, preparing contingency plans to deal with greater employee absences, budgeting for approved overtime hours for employees not on leave, securing contracts with reputable staffing agencies for temporary employees, and adjusting business processes to improve efficiency in the event of more frequent employee absences.

### **Pay Equity is No Longer Just Required, It Will Be Monitored**

Starting in 2021, employers will be specifically required to monitor and report on diversity and inclusion within the workplace, particularly as it relates to pay equity and corresponding data reporting. These changes are not surprising, given California's recent legislative initiatives tied to encouraging a diverse and inclusive workforce. In recent years, California outlawed discrimination on the basis of certain hairstyles worn by primarily minority employees such as dreadlocks, braids and other natural hairstyles (employers should update their dress code policies if they have not already done so). Similarly, discrimination based on religious dress and grooming practices (such as a Hijab) is outlawed under California law, and some employers have been hit hard for failing to comply with these evolving dress standards.

California employers must now focus on new statutory changes mandating equal pay across race and gender. Starting on March 31, 2021 (and every year thereafter), private employers with 100 or more employees are required to submit a pay data report to the California Department of Fair Employment and Housing ("DFEH") that discloses pay band data for employees (by race, ethnicity, and gender) who are em-

ployed in specified job categories, so that the DFEH can identify potentially discriminatory pay practices. For the next few months, especially during the year-end evaluation and bonus period, employers should proactively review and make any necessary changes to their pay policies and practices before the DFEH reviews such data (which becomes a public record once submitted). Employers should also anticipate future legislation placing these same reporting requirements on smaller companies, similar to the changes implemented to California's leave laws

### **CDF Labor Law Continues To Be the Go-To Employment Firm for California Employers**

As an employer in California ourselves, CDF Labor Law LLP ("CDF") understands the unique pressures tied to running a successful business and managing the various requests from employees. No matter what the circumstance, employers have to be able to navigate the complex and ever-changing legal landscape in California, while also appreciating that the workplace is full of people with unique backgrounds and perspectives, fluctuating life circumstances, and an overall need to work to provide for themselves and their families. CDF has worked alongside employers for over 25 years providing *Counsel to California Employers*® including advice and counseling for litigation avoidance and defending them when employment claims prove unavoidable. We look forward to continuing our partnership with companies that have workforces in California in 2021 during these evolving and challenging times to assist in building back their workforces and ensuring their economic success.



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