New Required Notice and California Paid Sick Leave Expansion

By Gladys Rodriguez-Morales, Fenton & Keller

Senate Bill (SB) 616 amends the Healthy Workplace, Healthy Family Act of 2014, increasing the amount of paid sick leave most employers are required to provide to employees from three days (24 hours) to five days (40 hours) per year, effective Jan. 1, 2024. Employers should be aware of the following requirements concerning the new paid sick leave expansion:

1. ENTITLEMENT TO PAID SICK LEAVE

Employees are entitled to paid sick leave if they work at least 30 days for the same employer within one year. Employees are entitled to five days or 40 hours of paid sick leave per year, whichever is greater. For example, if an employee works a legally compliant alternative workweek schedule of 10-hour shifts, the employee is entitled to 50 hours (5 days x 10 hours) of paid sick leave a year. Employees working in any city or county that provides more paid sick leave than California requires must be provided with the higher amount.

2. TWO METHODS FOR PROVIDING PAID SICK LEAVE

Employers can provide paid sick leave one of two ways: (1) the lump sum method providing employees five days (40 hours) of paid sick leave available for the employees' immediate use; or (2) the accrual method, whereby employees earn one hour of paid sick leave for every 30 hours worked. Employers may choose to implement the lump sum method for some employees (for example, full-time employees) and adopt the accrual method for another group of employees (for example, part-time or seasonal employees.)

Employees receiving a lump sum of paid sick leave can be limited to using five days (40 hours) of paid sick leave per year, and employers are not required to allow employees to carry unused sick leave over to the following year. Unused sick leave may be forfeited at the end of the year, and a new lump sum of sick leave will be provided on the first day of the following year.

Under the accrual method, unused paid sick leave will carry over to the next year and employers can cap the accrued paid sick leave to ten days (80 hours) and limit the use of sick leave to five days (40 hours) per year.

3. ADJUSTMENTS REQUIRED FOR 2024

In addition to increasing the total hours of sick leave provided, employers who currently use a date other than Jan. 1 to reset the paid sick leave year will have to make adjustments now to comply with the new sick leave requirements. If an employer uses the lump sum method and provided an employee with three days (24 hours) of paid leave on a date other than Jan. 1, the employer has the choice to provide the two additional paid sick leave days on Jan. 1, 2024 or move the measurement of the yearly period to Jan. 1, 2024 and provide five days (40 hours) on Jan. 1, 2024. For example, if an employee started work on May 1, 2021, and the employer used that anniversary date to provide the lump sum of three days (24 hours) on May 1, 2023, the employer may either provide two days (16 hours) on Jan. 1, 2024, and keep the May 1 date to provide the lump sum each year or the employer can "reset" the date to provide the lump sum on Jan. 1, 2024 and provide the employee five days (40 hours) on Jan. 1, 2024 and each Jan. 1 thereafter.

Employers who currently use the accrual method and impose a cap on the use of paid sick leave each year must change the sick leave usage cap to 40 hours (five days) on Jan. 1, 2024. For example, if an employer uses the 12-month sick leave year of May 1 to April 30 and implements a cap, and an employee used 24 hours (three days) of paid sick leave before Jan. 1, 2024, the employer must allow the employee to use an additional two days (16 hours) before April 30 if the employee has accrued that additional leave.

4. USE OF PAID SICK LEAVE

Employees may use paid sick leave starting on their 90th day of employment for the care, treatment or diagnosis of the employee, the employee's child, parent, spouse, registered domestic partner, grandparent, grandchild, sibling, or a designated person (an individual related by blood or whose association with the employee is equivalent of a family relationship), or if the employee is a victim of domestic violence, sexual assault, or stalking.

5. NOTICE AND POSTING REQUIREMENTS

Employers must provide each employee with written notice of their sick leave rights and post a new poster at each worksite. An updated English version of the "Notice to Employee" is available through the Department of Industrial Relations ("DLSE") at https://www.dir.ca.gov/dlse/lc_2810.5_notice.pdf (English). The DLSE has yet to make available an updated Spanish version for use. The required "Paid Sick Leave" poster can be downloaded at https://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf

6. WAGE STATEMENT AND RECORD KEEPING REQUIREMENTS

Employers must track the number of paid sick leave hours an employee has available for use and provide this information on the employee's wage statement or a separate document provided to the employee with their paycheck. Employers must also maintain records for at least three years showing the number of hours of paid sick leave that each employee has accrued and used.

For more information visit the DLSE California Paid Sick Leave Frequently Asked Questions at https://www.dir.ca.gov/dlse/paid_sick_leave.htm

Gladys Rodriguez-Morales is a lawyer with the Fenton & Keller law firm in Monterey. This article is intended to address topics of general interest and should not be construed as legal advice. For more information, please visit www.fentonkeller.com.

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The Risk of Requiring Employees to be Civil at Work

By Charles Mullaney, Noland, Hamerly, Etienne & Hoss

The National Labor Relations Act (NLRA) protects the rights of non-managerial employees of most private sector employers to engage in "concerted activity," regardless of whether they are unionized. "Concerted activity" includes employees discussing their wages and benefits or other working conditions with each other. Employers can be subject to unfair labor charges if the National Labor Relations Board (NLRB) interprets their work rules as restricting concerted activity.

For five years, employers had relatively clear guidance on workplace rules that were allowed under NLRA standards. Under the Boeing Co. decision, the NLRB placed work rules into three categories: (1) always lawful; (2) warranting individual scrutiny; and (3) always unlawful. Unfortunately, for employers, this categorical approach has been scrapped and so has much certainty regarding workplace rules.

On Aug. 2, 2023, the NLRB's Stericycle, Inc. decision reverted back to a modified version of an old "reasonable interpretation" standard reviewing work rules from the perspective of an economically dependent employee who contemplates engaging in workplace discussions with co-workers. If the employer's workplace rule could be reasonably interpreted to "chill" employees from exercising these rights, it is deemed presumptively unlawful. Further, employers must now narrowly tailor their policies to legitimate business needs — ambiguity in policies will be construed against employers. The new standard applies retroactively so an employer has no defense that its work rules were appropriate under the prior standard.

In practice, what does this mean? Under the old Boeing Co. standard, civility rules requiring employees to be respectful and subjecting employees to discipline for insubordinate conduct were always lawful. But under the new standard, overly broad civility rules may be presumptively unlawful. An NLRB Administrative Law Judge (ALJ) applied the new standard to find that the following fairly standard policy in a Starbucks handbook is presumptively unlawful: "Partners are expected to communicate with other partners and customers in a professional and respectful manner at all times." The ALJ found that the rule was presumptively unlawful because "respectful" and "professional" language is not always apparent, and an employee could reasonably interpret the rule as prohibiting concerted activity.

Starbucks argued that the purpose of this policy was to advance workplace civility. The ALJ stated that maintaining basic standards of civility is a legitimate and substantial business interest in the workplace but that the policy as worded was overbroad, vague, and susceptible to being interpreted by employees as prohibiting them from discussing work conditions with each other. Further, the ALJ said that Starbucks failed to show that it was unable to advance those interests with a "more narrowly tailored rule" but gave no input as to how the employer could more narrowly tailor the rule.

Given this updated NLRA standard, employers should review their handbooks for workplace policies that could be interpreted as restricting employee communications and modify them to avoid liability under the NLRA.

Charles Mullaney is an attorney with Noland Hamerly Etienne & Hoss in Salinas. His practice focuses on labor and employment law. This article is intended to address topics of general interest and should not be construed as legal advice. © 2024 Noland, Hamerly, Etienne & Hoss.

New Model Template for Workplace Violence Prevention Plans

By Bradley J. Levang, Fenton & Keller

Last fall, Gov. Gavin Newson signed Senate Bill 553 (SB 553) into law, which requires California employers to establish, implement, and maintain a written Workplace Violence Prevention Plan (the "Plan") by July 1, 2024. Recently, Cal/OSHA published its much-anticipated model workplace violence prevention plan, which employers can access under the "Workplace Violence Prevention" heading here: https://www.dir.ca.gov/dosh/PubOrder.asp#WVP.

The model plan is designed to assist employers in drafting their own plans. Employers are not required to use Cal/OSHA's model but may use it as a template. The model plan contains numerous questions and examples for employers to consider as they assess the risks in their own workplaces and "fill in the blanks" of the template accordingly.

Covered Employers. Most California employers are subject to the new law. There are some limited exceptions for:

- employers already covered by Cal/OSHA's violence prevention in health care standards;
- employees who telework from a location of their choosing that is outside the employer's control;
- locations that are not open to the public where less than 10 employees work at a given time; and
- certain public agencies.

Workplace Violence Defined. The law broadly defines "workplace violence" to include any act of violence or threat of violence that occurs in a place of employment. Workplace violence is the threat or use of physical force, a firearm, or other dangerous weapon against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury.

Plan Requirements. Among other terms, the Workplace Violence Prevention Plan must:

1. Indicate the name(s) of the individuals responsible for implementing the Plan;
2. Identify effective procedures to obtain the active involvement of employees in developing and implementing the Plan, including having employees help identify, evaluate, and correct violence hazards, and design and implement training;
3. Include methods to coordinate the Plan with other employers, if applicable;
4. Identify procedures for the employer to address and respond to reports of workplace violence, and prohibit retaliation against any employee who makes a report;
5. Include procedures to ensure that employees, including supervisors, comply with the Plan and training procedures;
6. Contain effective procedures for communicating workplace violence matters with employees, including informing employees how to report a violent incident, threat, or other workplace violence concern to the employer or law enforcement;
7. Describe how workplace violence concerns will be investigated and how employees will be informed of the results of the investigation and any correction actions;
8. Contain procedures to identify and evaluate workplace violence hazards, including conducting periodic inspections to identify unsafe conditions, unsafe work practices, and employee reports and concerns; and
9. Include procedures for post-incident response and investigation, and for the review of the effectiveness of the Plan and revisions as needed.

Responding to Workplace Violence Emergencies. The Plan must describe procedures on how employees should respond to actual or potential workplace violence emergencies, including:

1. Identifying effective means to alert employees about the presence, location, and nature of workplace violence emergencies;
2. Describing evacuation or sheltering plans that are appropriate for the workplace; and
3. Explaining how to obtain help from staff or security personnel assigned to respond to workplace violence emergencies, if any, and law enforcement.

Training Requirements. Employers must provide employees with effective training when the Plan is first established and annually thereafter. Training material must be easy for employees to understand and appropriate for employees' education, reading skills, and language. Following the discovery of new or unidentified workplace violence hazards or revisions to the Plan, the employer must provide additional training on those hazards or modifications. Training records must be retained for at least one year.

The training must cover topics, including:

1. The employer's Plan, how employees can participate in the Plan, and how employees can obtain free copies of the Plan;
2. How to report workplace violence hazards and incidents;
3. Potential violence hazards specific to the workplace, corrective measures the employer has implemented, and information on how to seek help to prevent violence in the workplace;
4. The purpose of the violence incident log, its location, and how to obtain a copy; and
5. An opportunity for interactive questions and answers with someone knowledgeable about the Plan.

Recordkeeping Requirement. Employers must also maintain a detailed written log of every workplace violence incident in the workplace. The information recorded in the log must include the date, time, and location of the incident and provide a detailed description of the incident, identifying where the incident occurred, the type of violence, classification of who committed the violence (e.g., co-worker, supervisor, customer, etc.); and circumstances at the time of the incident.

The workplace violence incident log must indicate the consequences of the incident, including whether law enforcement was involved, and the steps taken to prevent further threats or hazards. Records related to employee training, violent incident logs, and employer investigation of workplace violence incidents must be kept for at least five years. Employees are entitled to copies of these records within 15 calendar days of a request.

Cal/OSHA also published a fact sheet that provides employers with a helpful overview of the above requirements. The fact sheet can be accessed here: https://www.dir.ca.gov/dosh/puborder.asp. Employers should consult with their labor counsel soon to draft a compliant plan and implement measures to comply with these additional requirements before the July 1, 2024 effective date.

Bradley J. Levang is a lawyer with the Fenton & Keller law firm in Monterey. This article is intended to address topics of general interest and should not be construed as legal advice. For more information, please visit www.fentonkeller.com.

Navigating the World of Campaign Finance Regulations

By Isaac Nikssarian, Noland, Hamerly, Etienne & Hoss

It's that time of the year when your local candidates will ask for a contribution to their campaign. The burning question in every office and dining room is "how much can I donate?"

California State and Local Offices

A. Cash donations

In California, a "person" is defined as an individual, business entity, trust, or committee. The maximum donations in 2024 are:

Office	Maximum Contribution
Governor, City, County, Senate and Assembly candidates	$36,400 per election
Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Supt. of Public Instruction, Insurance Commissioner, and Board of Equalization	$9,100 per election
Senate and Assembly	$5,500 per election
City and County Candidates (if no locally enacted limit)	$5,500 per election
Committee (PAC), other than a Political Party, that contributes to State Candidates	$9,100 per calendar year
Political Party Account for State Candidates	$45,500 per calendar year
Small Contributor Committee	$200 per calendar year

For married couples, each person can make their own contribution per candidate per election. The campaign will report the donor as the individual who signs the check and if two or more individuals sign the check, the contribution is divided equally between the signers. If the married couple [in our example named Mary and John Smith, who are donating to a local candidate] has a joint account that requires the signatures of both spouses, each spouse can still contribute $5,500 by writing two checks for $5,500, but a note must be placed on the first check as follows: "donation from Mary Smith only." The second check must contain a note that the donation is being made on behalf of John Smith only.

A candidate running for re-election can receive a contribution but only for that specific position and race.

A business owner cannot reimburse contributions made by employees.

California recently added further restrictions to locally elected officials by requiring campaigns to disclose prior contributions made by the same party to prevent "pay to play" or the expectation that the politician, if elected, will approve a permit or issue a license to the donor. A person is limited from contributing more than $250 to a candidate, officer, or agency for 12 months after a decision has been rendered regarding a donor's license or permit.

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Factors other than the limits above may influence the amount and permissibility of contributions to candidates, including contributions by affiliated individuals and entities, and lobbying and contracting activity.

B. Non-cash donations

Donations other than cash, such as hosting a house party, or allowing a candidate to use empty office space, can pose tricky issues. If you host a fundraiser, any cost up to $500 does not need to be reported. Any costs exceeding $500 will be considered a campaign contribution. If a landowner allows a candidate to use empty space without paying fair market rent, then the difference between what is paid, and the fair market value of the rental space is considered a non-monetary contribution which cannot exceed the $5,500 limit.

C. Gift limits

State and local officials and employees may not receive a gift or gifts totaling more than $590 in a calendar year.

Federal Offices

Individuals, partnerships, trusts and LLCs contributing to candidates running for the House of Representatives, Senator, Vice-President or President, are governed by federal law and limited to donations of $3,300 per election. A primary, general, runoff and special election are considered separate elections. Federal campaigns must report contributions exceeding $200 or aggregating over $200 from the same source.

Consult your own lawyer before making any campaign contributions or contact the California Fair Political Practices Commission at (866) 275-3772 or the Federal Election Commission at(800) 424-9530.

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Isaac Nikssarian is a summer law clerk at Noland, Hamerly, Etienne & Hoss and a law student at Santa Clara University School of Law. A Monterey native, Isaac graduated from West Point and served nine years on active duty in the U.S. Army. He is currently a Major in the U.S. Army Reserve.

Rent Stabilization in Salinas

By Geraldine Villa, Attorney, Noland, Hamerly, Etienne & Hoss

On Sept. 24, 2024, the Salinas City Council unanimously adopted rent stabilization and tenant protection policies. These policies are organized in three ordinances identified as a Rent Stabilization Ordinance, Just Cause Eviction/Tenant Protection Ordinance, and Tenant Anti-Harassment Ordinance. These ordinances are effective Jan. 1, 2025.

This article is the first article of a three-part article series about these new ordinances. The article addresses only the Rent Stabilization Ordinance ("Rent Ordinance"). The other parts of the ordinance will be discussed in later articles.

Some properties are Exempt

Single-family homes, condos, properties built after 1995, rental units which are deed restricted as affordable housing by a regulatory agreement or similar document, rental units in hospitals, convents, monasteries, extended medical care facilities, rental units in a hotel, motel, or room in boarding house, rental unit in an institutional facility including a hospital, medical care facility, residential care facility, are all among the residential properties exempt from this Rent Ordinance.

This Rent Ordinance targets multifamily buildings built before 1995.

This, however, could change if Proposition 33 is adopted by California voters in November. If Proposition 33 is adopted repealing the Costa-Hawkins Act, then single-family homes, condos, and properties built after 1995 will not be exempt.

Limits on Rent Increases

The ordinance limits annual rent increases to 2.75% or 75% of the most-recent 12-month increase in the Consumer Price Index for All Urban Consumers (CPI-U) Series, whichever is less. Only one rent increase in a 12-month period is permitted and that 12-month period begins on the date of the last rent increase regardless of whether that rent increase occurred prior to the effective date of the Rent Ordinance.

Landlord's Ability to Petition City to Charge More Than Rent Caps

Landlords can petition the City to charge more than the rent caps contained in the ordinance by filing a Fair Return Petition. To file a Fair Return Petition, the landlord obtains the Petition Form from the City and must serve the completed form on all tenants. The petition should be supported by whatever documentation the landlord has that justifies a rental increase above that allowed by the ordinance's rent caps.

In reviewing the petition, the City will examine changes in the Consumer Price Index for All Urban Consumers (CPI-U), the pattern in recent rent increases or decreases; changes in property tax or other taxes related to the property; deterioration of the property other than normal wear and tear; any failure of the Landlord to provide adequate Housing Services or to comply with applicable state rental housing laws; and other relevant evidence demonstrating the landlord is not receiving a just and reasonable return.

In no event may the landlord seek a rent increase exceeding the amount authorized by state law which is no more than 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is less. See Cal. Civ. Code 1947.12. The landlord must pay to the City, in advance, all costs associated with the City's review of the Fair Return Petition, including the costs of any experts that the City determines are necessary to rule on the petition. The landlord must pay all of the City's estimated costs before City will process the petition.

The tenants have 30 days from the date of receipt of the Fair Return Petition to respond and provide the City Attorney any materials the tenants want the City to consider in deciding the Fair Return Petition.

The City must make a decision on the Fair Return Petition within 90 days after the City deems the petition complete. Any person aggrieved by the decision may appeal to the City Council.

Landlord Petition to Pass Through Certain Capital Improvement Costs

With permission of the City, a landlord may file an application for a capital improvement plan with a request to pass-through certain capital improvement costs to tenants once work on the rental has been completed. This petition should include the actual cost of completed capital improvements to the rental unit based on actual expenses amortized over the life of improvement and does not include the ordinary repair, replacement and maintenance or costs attributable to bringing a rental unit into compliance with health and safety laws.

A tenant may file a financial hardship application that will exempt them with respect to any rent increase based on a pass through of capital improvement costs.

Tenants Can Petition for Rent Reduction

A tenant may request a rent reduction if he or she believes that the landlord has demanded rent in excess of the maximum rent permitted by the Rent Ordinance, if the landlord has reduced housing services (defined as all amenities related to the unit) or if the landlord fails to maintain the unit in a habitable condition as required by state or local law. The "Rent Reduction Petition" may request a refund of, or decrease in, rent proportional to the amount landlord accepted in excess of the maximum rental limitations, or the landlord's reduction in housing services or the failure to maintain the rental unit in a habitable condition.

The tenant must provide the landlord a copy of the Rent Reduction and the landlord has 30 days from the date of receipt to respond to it.

The tenant bears the burden of establishing a reduction is necessary. A Hearing Officer may consider factors such as the landlord's failure to comply with the Rent Ordinance, reductions in housing services, and habitability violations. The Hearing Office must make a decision within 60 days. Any person aggrieved by the decision may appeal to the City Council.

Notice Requirements

Salinas landlords are required to notify tenants (both current and future) of this Rent Ordinance. On or before commencement of a tenancy or a rental increase, the landlord must provide tenants written notice that the tenancy is regulated by this Rent Ordinance. The notice must detail the tenant's rights under this ordinance such as the right to submit a complaint, Rent Reduction Petition, the tenant's right to respond to any Fair Return Petition and of the ineffectiveness of any rent increase if the requirements of the ordinance are not met.

Rent Stabilization see page 27

Increased Minimum Wages for Health Care Workers

By Gladys Rodriguez-Morales, Fenton & Keller

The minimum wage has increased yet again. This time for health care workers who provide health care services or who provide services that support the provision of health care, and who work for a health care employer that is subject to the new minimum wage law.

In October of last year, Gov. Gavin Newsom signed Senate Bill 525, and in May and June of this year he signed Senate Bills 828 and 159, respectively, codified in Labor Code sections 1182.14, 1182.15, and 1182.16, which increased the minimum wage for health care workers in health care facilities covered by Senate Bill 525. The new minimum wage requirements for covered health care employers went into effect on Oct. 16, 2024.

Senate Bill 525 provides five separate phase-in minimum wage schedules, which range between $18 and $25 an hour. The minimum wage will increase until it reaches $25 an hour for all covered health care facilities by the year 2033. Generally, hospitals, residential care facilities, skilled nursing facilities, physician groups, and outpatient clinics are health care facilities subject to the new law. However, there are exceptions to who is a covered health care facility. For example, a physician group with less than 25 physicians is not a health care facility that is subject to the new law.

If a health care facility is covered by the new law, the applicable minimum wage depends on factors like the type and size of the health care facility. For example, a community clinic is now required to pay a minimum wage of $21 an hour. Pursuant to the phase-in schedule, on July 1, 2026, the minimum rate for community clinics will increase to $22 an hour, and on July 1, 2027, the minimum wage will increase to $25 an hour. On Jan. 1, 2029, the minimum wage for community clinics will be adjusted each year for inflation.

Furthermore, an employee of the covered health care facility is entitled to the increased minimum wage if the employee provides patient care related services, health care services, or services that support the provision of health care, like, but not limited to, nurses, physicians, janitors, clerical and administrative workers, food service workers, medical coding and medical billing personnel, and schedulers.

As a result of the increase to the minimum wage for health care workers, health care employers need to ensure that their exempt workforce are meeting the exempt salary requirements by paying at least one and a half times the applicable health care worker minimum wage rate or two times the state minimum wage rate, whichever is greater. For example, a health care employer that is currently required to pay a minimum wage of $21 an hour must pay their exempt employees a yearly salary of at least $66,560 since twice the state minimum wage rate ($16 x 2 = $32) is greater than the one and a half times the applicable health care worker minimum rate ($21 x 1.5 = $31.5).

All health care employers subject to the new phase-in minimum wage schedule are required to post the new minimum wage rate at their facilities in an area that is frequented by its employees such as breakrooms and cafeterias, or a location where the employer customarily posts work-related notices. A copy of the required minimum wage poster is made available through the Department of Industrial Relations and can be downloaded at https://www.dir.ca.gov/iwc/MW-2024-HC-SUPPLEMENT.pdf.

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Health care employers subject to the new phase-in minimum wage schedule also have an obligation to notify their employees of their new rate or salary by providing them with advanced written notice of the change to their hourly rate or salary. This obligation can be fulfilled by providing employees with a completed "Notice to Employee," which is available through the Department of Industrial Relations and can be downloaded in six languages at https://www.dir.ca.gov/dlse/dlse-publications.htm. The notice must be given in the language that is usually used by the employer to communicate employment-related information to its employees.

Since the minimum wage will increase in phases, health care employers will need to ensure that updated minimum wage posters are posted timely and that employees are provided with written advance notice of changes to their hourly rates or salary.

Gladys Rodriguez-Morales is a lawyer with the Fenton & Keller law firm in Monterey. This article is intended to address topics of general interest and should not be construed as legal advice. For more information, please visit www.fentonkeller.com.