HINSHAW

12 Days of California Labor and Employment: 2025 Year in Review

Compliance Reminders for 2026 Updates

10+ min read

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The end of something is always the beginning of something else. That always rings true for years' end and new employment laws. It is time, once again, for all employers to sit down, buckle up, and get ready for the 2026 California employment law updates and changes.

As usual, more than a dozen new employment laws have been passed. Workplace violence and safety, discrimination, and paid leave laws remain at the top of the list as we enter 2026, with AI and data privacy also moving up the list. Before we pop the champagne and say goodbye to 2025, it is time to reprise our annual review of key California labor and employment law developments.

In the spirit of the season, we are kicking off our annual "12 Days of the Holidays" blog series to address new California laws and their impact on employers. For the next several weeks, we will provide updates on this page. We encourage employers to bookmark this page and watch for announcements on our social media channels and email updates to our subscribers. Not currently a subscriber? Sign up here!

Day 1: *Expansion of Benefits Under Paid Family Leave*

On the first day of the holidays, my labor and employment attorney gave to me a partridge in a pear tree and **SB 590.**

Effective **July 1, 2028**, the passage of **SB 590** expands eligibility for benefits under Paid Family Leave to mirror the California Family Rights Act (CFRA) and include individuals caring for a seriously ill designated person.

What is Paid Family Leave?

Paid family leave is a family temporary disability insurance program. It provides up to eight weeks of wage replacement benefits to employees to take time off to:

- care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner;
- bond with the minor child within one year of the birth or placement of the child in connection with foster care or adoption; or to
- participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

As of January 1, 2023, with the passage of AB 1041, the California Family Rights Act (CFRA) expanded leave entitlement, wherein employees were able to use leave under the CFRA to care for the designated person. Read our prior blog post for more information.

AB 1041 defined a **"designated person"** as any individual related by blood or whose association with the employee is equivalent to a family relationship. However, this expansion that was granted under CFRA was not provided under Paid Family Leave.

What are the Changes to Paid Family Leave?

- **"Designated person"** is defined as any care recipient related by blood or whose association with the individual is the equivalent of a family relationship – basically the same definition as included in CFRA. This means that there does not need to be a legal or biological relationship to the employee for them to receive Paid Family Leave benefits. This new category of benefits goes into effect on **July 1, 2028.**
- **"Care recipient"** has the same definition as previously and includes the family member who is receiving care for a serious health condition or the new child with whom the care provider is bonding. It may also include the military member, a child, or a parent of the military member who is receiving assistance, or the employee participating in a qualifying exigency. However, the definition of family member is expanded as of **July 1, 2028,** to include a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person.
- **An employee may only designate one person per 12-month period.**
- When the employee is requesting benefits for the first time to care for a designated person, unlike a family member, a**n employee is required to identify the designated person at the time of their claim as well as attest under the penalty of perjury to either of the following:**
  - How the relationship is related by blood to the designated person; or
  - How the employee's association with the designated person is equivalent to a family relationship.

What are the Benefits?

Currently, as well as moving forward, employees who qualify for the Paid Family Leave program are entitled to no more than eight weeks of family temporary disability insurance benefits within any 12-month period. The 12-month period begins with the first day the employee establishes a valid claim for family temporary disability benefits.

In order to have a valid claim,

1. The employee shall file a claim for family temporary disability insurance benefits no later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits;
2. This time shall be extended by the department upon a showing of good cause.
3. If a first claim is not complete, the employee must return it no later than the tenth consecutive date after it was mailed back to the employee by the department.

Moving Forward

SB 590 and the addition of "designated person" take effect on **July 1, 2028**. Prior to that time, California employers should

1. update their paid leave policies;
2. update their handbooks;
3. update any notices to employees on Paid Family Leave; and
4. train their HR staff on the changes.

Day 2: *Leave Expansions for Victims*

On the second day of the holidays, my labor and employment attorney gave to me two turtle doves and **AB 406**.

Last year, California passed AB 2499, which expanded protections for victims of violence (see last year's blog post). The enactment of AB 2499 repealed and replaced two Labor Code Sections, and amended a third one. **AB 406 adds further protections for victims of violence** by re-adding the two repealed Labor Code Sections, and amending four other code sections.

What is AB 406?

Government Code Section 12945.8 protects employees from discrimination for taking job-protected leave as victims or family members of victims of domestic violence, sexual assault, stalking, and other serious crimes.

Prior to AB 406, an employee who was a victim was able to take time off to obtain or attempt to obtain relief such as a temporary restraining order or a restraining order, other injunctive relief, or to help ensure the health, safety, or welfare of the victim or their child.

It also allowed employees to take time off to serve as required by law on an inquest jury or trial jury, as well as to take time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

What Changed?

AB 406 brings the following five key changes for California employers to take note of:

1. Victims and Impacted Family Members Can Take Time Off for Judicial Proceedings

Now, as of **January 1, 2026**, an employee who is a victim or a family member of a victim is able to take time off from work in order to attend judicial proceedings related to that crime, including, but not limited to, any delinquency proceeding, a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding where the rights of that person is an issue.

2. Updated Definition of a Victim

AB 406 further defines that a **victim** includes a person against whom a violent felony, a serious felony, or a felony provision of law prescribing theft or embezzlement is committed. It also includes a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of any of the following crimes or delinquent acts:

1. Vehicular manslaughter while intoxicated;
2. Felony child abuse that is likely to produce great bodily harm or death;
3. Assault resulting in the death of a child under eight years of age;
4. Felony domestic violence;
5. Felony physical abuse of an elder or dependent adult;
6. Felony stalking;
7. Solicitation for murder;
8. A serious felony;
9. Hit and run causing death or injury;
10. Felony driving under the influence causing injury; or
11. Sexual assault.

3. Employees can use Paid Sick Leave for Judicial Proceedings

AB 406 also added the benefit that an employee can use paid sick leave for any time off for the above reasons. This became effective as of October 1, 2025. Prior to AB 406, employees were only able to use unpaid leave for

jury duty or appearing in court as a witness under subpoena.

4. Labor Code Section 230 was Reinstated

Labor Code Section 230 was previously repealed but has now been added back to the Labor Code. However, this section will only apply to alleged actions or inactions that occurred on or before December 31, 2024.

5. Labor Code Section 230.1 was Added Back

Lastly, AB 406 also added back Labor Code Section 230.1, which is applicable to employers with 25 or more employees, and notes that they cannot discriminate or retaliate against any employee who is a victim that:

- Takes time off from work to seek medical attention for injuries caused by crime or abuse;
- Takes time off from work to obtain services from a domestic violence shelter program, rape crisis center, or victim services organization or agency as a result of the crime or abuse;
- Takes time off from work to obtain psychological counseling or mental health services related to an experience of crime or abuse; or
- Takes time off from work to participate in safety planning or other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

Similar to Labor Code Section 230, this section will only apply to actions or inactions that occurred on or before December 31, 2024.

Key Takeaways

Employers should be aware that employees are able to use paid sick leave for appearing in court via a subpoena or by being part of a jury. This change has already taken effect, so HR staff should be updated accordingly.

Further, employers should update their handbooks accordingly and continue providing detailed communications to employees whenever there is an issue involving violence to ensure that employees are receiving proper leave and that it is documented correctly.

Day 3: *Notice and Transparency Rights for Employees*

On the third day of the holidays, my labor and employment attorney gave to me three French hens, **SB 513,** and **SB 294.**

Requiring transparency to California employees is nothing new. Historically, California has mandated that employers provide employee notices regarding their employment rights. It has also allowed inspection of employee files and

production of the same for quite some time. Effective **January 1, 2026**, SB 513 and SB 294 add additional notice and transparency rights.

Personnel Files

Labor Code § 1198.5 currently provides that every current and former employee has the right to inspect and/or receive a copy of their personal records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

The employee's representative can also request these records. When a request is made, the employer must make the contents of the personal records available for inspection within 30 calendar days from the date the employer received a written request, unless there is an agreement to extend the date.

However, the extended date cannot exceed 35 calendar days from the date that the employer receives the written request. The employee is also able to request a copy of the personnel records within the same deadlines. A former employee is allowed one request per year.

An employer is responsible for maintaining a copy of each employee's personnel records for a period of no less than three years after the termination of employment. Furthermore, an employer is also permitted to redact the names of any nonsupervisory employees contained in the records.

A violation of this Labor Code may result in a penalty of $750, injunctive relief, and/or attorney fees.

What is not Included in a Personnel File?

There are specific items that do not need to be produced for inspection or production. These include:

1. Records relating to the investigation of a possible criminal offense;
2. Letters of reference; or
3. Ratings, reports, or records that were obtained prior to the employment, obtained in connection with the promotional examination, or prepared by identifiable examination committee members.

What is Included in a Personnel File?

The Labor Commissioner's office defines "**personal records**" as those used or previously used to determine an employee's qualifications for promotion, additional compensation, or disciplinary action, including termination.

Generally, a personal file will include the following, which is not all-inclusive:

- application for employment;
- payroll authorization form;

- notices of commendation, warning, discipline, and/or termination;
- notices of layoff, leave of absence, and vacation;
- notices of wage attachment or garnishment;
- education and training notices and records;
- performance appraisals/reviews; or
- attendance records.

SB 513 expands the scope of personal documents that employers must allow current and former employees to inspect to include records pertaining to education or training that the employee received. The training records should include:

- the name of the employee;
- the name of the training provider;
- the duration and time of training;
- the core competencies of the training, including skills in equipment or software; and
- the resulting certification of qualification.

Any employer that provides in-house training of any kind will be required to create and maintain training documentation as noted above as of **January 1, 2026**. This will include anything directly provided by the employer and/or by a third party brought in by the employer.

Notice Requirements

SB 294 also takes effect as of January 1, 2026, and is known as California's "Workplace Know Your Rights Act." Employers are required, on or before February 1, 2026, and then annually thereafter, to provide a standalone written notice to each current employee of certain workers' rights, including:

- the right to workers' compensation benefits in addition to the Division of Workers' Compensation contact information;
- the right to notice of inspection by immigration agencies;
- protection against unfair immigration-related practices against the person exercising protected rights;
- the right to organize a union or engage in concerted activity in the workplace; and
- Constitutional rights when interacting with law enforcement at the workplace, including the Fourth Amendment to be free from unreasonable searches and seizures, and rights under the Fifth Amendment for due process and against self-incrimination.

The notice must also include a description of new legal developments pertaining to laws enforced by the Labor and Workforce Development Agency that the Labor Commissioner deems material and necessary, as well as a list

developed by the Labor Commissioner of the enforcement agencies that may enforce the underlying rights in the notice.

When and How Should Employers Provide Notice?

Timing

- The written notice shall be provided annually. It may be done via personal service, email, or text message, if it can be reasonably anticipated to be received by the employee within one business day of sending.

Language

- The notice must be provided to an employee in the language the employer normally uses to communicate any employment-related information to the employee and which the employer understands, if the template notice is available in that language on the Labor Commissioner's website.
- Otherwise, the written notice may be provided in English. An employer may also, in addition to a written notice, choose to provide a link to, or show, the video that is required to be developed by the Labor Commissioner's office.

New Hires

- Employers are also required to provide the written notice to each new employee upon hire and to provide a written notice annually to an employee's authorized representative, if any.

Labor Commissioner Requirements

- SB 294 also tasked the Labor Commissioner with developing a template notice that an employer may use to comply. They are required to post this template on the website on or before **January 1, 2026**, and post an updated template notice annually thereafter.
- In addition, the Labor Commissioner has been tasked with developing a video for employees advising them of their rights under the areas detailed and to develop a video for employers, advising them of the rights and requirements under these areas. Both of these requirements must be done by the Labor Commissioner on or before **July 1, 2026.**

Emergency Contact

- SB 294 also requires employers to allow employees to designate an emergency contact to be notified if the employee is arrested or detained at work or during work hours if the employer has actual knowledge of the event. This must be implemented on or before **March 30, 2026**.

Non-compliance Penalties

- Failure to abide by this new notice law may result in civil penalties up to $500 per employee for each violation and up to $10,000 per employee for certain violations, including failure to notify emergency contacts. Employers are not subject to duplicative penalties.

Key Takeaways

- In reference to training, employers must be advised that any training done through the employer must have written documentation, and this written documentation must be put into the personnel file.
- Employers should make sure their HR departments are brought up to speed on this new requirement to ensure that personal files are properly maintained.
- Regarding the notice requirements, employers should monitor the Labor Commissioner's website in January and watch for when the template goes live. Once the template is available, the employer must create their written notice and provide such notice to their employees on or before **February 1, 2026.**
- Again, employers should make sure their human resources department is trained on the new requirement and where to obtain the information.
- While the template is pending, it would be beneficial for employers to begin discussing their plans on the procedure the employer intends to implement for the new notice requirement.

Day 4: *Beware of Stay-or-Pay Agreements*

On the fourth day of the holidays, my labor and employment attorney gave to me four calling birds and **AB 692**.

California has long held that any contract restraining a person from engaging in a lawful profession, trade, or business is void with certain exceptions. AB 692 adds additional employee protections for stay-or-pay type agreements. The most common uses of stay-or-pay agreements involve relocation expenses, tuition reimbursement, training programs, and/or expenses.

What Does AB 692 Do?

As of **January 1, 2026**, an employment contract cannot require a worker to execute, as a condition of employment or work relationship, a contract that includes any specific contract terms requiring the worker to pay an employer, training provider, or debt collector for a debt if the worker's employment or work relationship with a specific employer terminates. Any such contract would be deemed void and contrary to public policy.

A contract term that does any of the following will be unlawful in any contract signed as of January 1, 2026:

- Requires the worker to pay an employer, training provider, or debt collector for a debt if the worker's employment or work relationship with the specific employer terminates.
- Authorizes the employer, training provider, or debt collector to resume or initiate collection of or end forbearance on a debt if the worker's employment or work relationship with the specific employer terminates.
- Imposes any penalty, fee, or cost on a worker if the worker's employment or work relationship with a specific employer terminates.

AB 692 defines **"penalty, fee, or cost"** to include a replacement hire fee, retraining fee, replacement fee, quit fee, reimbursement for immigration or visa-related costs, liquidated damages, loss of goodwill, and loss of profit, among other definitions.

What is Excluded from AB 692?

AB 692 specifically delineates that it does not apply to any of the following:

1. A contract entered into under any loan repayment assistance program or loan forgiveness program provided by a federal, state, or local governmental agency.
2. A contract related to the repayment of the cost of tuition for a transferable credential that meets a variety of requirements (discussed further below).
3. A contract related to enrollment in an apprenticeship program approved by the Division of Apprenticeship Standards.
4. The contract for the receipt of a discretionary or unearned monetary payment, including a financial bonus, at the outset of employment that is not tied to specific job performance if a variety of conditions are met (discussed further below).
5. A contract related to the lease, financing, or purchase of residential property.

Tuition Repayment Exclusion

Some employers offer tuition reimbursement as a benefit to employees. While these benefits will differ among employers, some may require the tuition reimbursement to be repaid to the employer if the employee leaves before a specified period of time.

In order for this type of tuition repayment to be excluded from the new prohibition on stay or pay agreements:

- The contract must be offered separately from any contract for employment;
- The contract may not require obtaining the transferable credential as a condition of employment;
- The contract must specify the repayment amount before the employee agrees to the contract;
- The repayment amount cannot exceed the cost to the employer of the transferable credential received by the employee;

- The contract needs to provide a prorated repayment amount during any required employment period that is proportional to the total repayment amount and the length of the required employment, with no accelerated payment schedule if the employee separates from employment;
- The contract cannot require repayment to the employer by the employee if the employee is terminated, except if the employee is terminated for misconduct.

Discretionary Payment Exclusion

There are also occasions where an employer offers a signing bonus to a candidate to entice them to accept the position and/or as an additional benefit.

This type of discretionary monetary payment can be recouped if:

- the terms of any repayment obligation are set forth in a separate agreement from the primary employment contract;
- the employee is notified that they have a right to consult an attorney regarding the agreement and are provided with a reasonable period of time of not less than five business days to obtain the advice of counsel prior to executing the agreement;
- any repayment obligation for early separation from employment is not subject to interest accrual and must be prorated based on the remaining term of any retention period, which shall not exceed two years from the receipt of payment;
- the employee must also have an option to defer receipt of the payment to the end of a fully served retention period without any repayment obligation; and
- any separation from employment prior to the retention period has to be the sole election of the employee or at the election of the employer, but only for misconduct.

Penalties

AB 692 provides for private right of action for monetary damages of the greater of employee's actual losses or $5,000, injunctive relief, as well as attorney fees and costs.

Next Steps for Employers

- At this time, AB 692 only applies to contracts that are entered into as of **January 1, 2026**, and thereafter. There is no need to amend or modify any existing agreements at this time.
- As this new law does not provide any further guidelines, it is anticipated that numerous questions will arise in 2026 regarding what an employer can and cannot do.
- It is recommended that employers evaluate their current employment contracts and update the language as necessary for any 2026 contracts when choosing to include a repayment provision.

- Lastly, it is always recommended to notify your human resources department or anyone in charge of hiring to ensure compliance with AB 692.

Day 5: *WARN Notice Updates*

On the fifth day of the holidays, my labor and employment attorney gave to me five golden rings and **SB 617**.

The California Worker Adjustment and Retraining Act (CalWARN) requires employers to provide a 60-day notice before a mass layoff (50 or more employees), plant closure, or relocation (100 miles or more). It applies to a covered establishment that has employed 75 or more full- and part-time employees in the prior 12 months.

Who Must Receive a Notice?

The required notice must be provided to:

- The affected employees.
- Employment Development Department (EDD).
- The Local Workforce Development Area (Local Area).
- The chief elected official of the local government affected by the WARN Notice.

The notice may be sent by first-class mail, personal delivery with an optional signed receipt, and/or a notice in your employee's pay envelope.

What Must the Notice Contain?

In order to comply with the CalWARN law, the notice, at a minimum, must contain the following:

- Name and address of the employment site where the mass layoff, plant closure, or relocation will occur.
- Name and phone number of a company official who can be contacted if more information is needed.
- Statement that indicates if the planned action will be permanent or temporary.
- Statement that clarifies if the entire plant will be closed.
- Expected date of the first separation, and the expected schedule for subsequent separations.
- Job titles of affected positions, and the number of employees to be laid off in each job title.
  - For a lay-off affecting multiple locations, list the job titles and the number of affected employees by job title for each location.
- List if bumping rights exist.

- Name of each union representing affected employees, if applicable.
- Name and address of the chief elected officer of each union, if applicable.

What is SB 617?

SB 617 adds additional required information to the required WARN notice. Specifically, employers must note whether they plan to coordinate services for the affected employees through the local workforce development board (LWDB), another entity, or not at all.

If the employer intends to coordinate services through a local workforce development board or other entity, the services must be arranged within 30 days from the date the notice was issued.

Regardless of whether the employer plans to coordinate services, the contact information for LWDB (email and phone number) must be included in the notice, as well as a description of its services.

In addition to the above, the WARN notices as of January 1, 2026, must include:

- A description of California's statewide food assistance program (CalFresh), including a short description, the CalFresh benefits helpline, and a link to the CalFresh website.
- The employer's email and telephone number.

When Does SB 617 Take Effect?

The new requirements take effect as of January 1, 2026.

Key Takeaways

The CalWARN notice requirements change as of January 1, 2026. Employers should take note of the additional notice requirements and implement them into future notices for any qualifying event.

Day 6: *Right to Recall Extended*

On the sixth day of the holidays, my labor and employment attorney gave to me six geese a-laying and **AB 858**.

AB 858 extends California's right-to-recall protections for laid-off workers in specified industries through **January 1, 2027**, and preserves robust anti-retaliation safeguards for employees who assert their rights. The law authorizes aggrieved employees to seek relief through the Division of Labor Standards Enforcement, while imposing no criminal penalties.

Background

The COVID-19 pandemic led to many layoffs in numerous industries. On April 16, 2021, California enacted **SB 93,** which provided laid-off employees with the opportunity to return to work, essentially granting them a right of first refusal when the employer was hiring.

A **laid-off employee** meant any employee who was employed for six months or more in the 12 months preceding January 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic. These reasons included a public health directive, a government shutdown order, a lack of business, a reduction in force, or other economic or non-disciplinary reasons related to the COVID-19 pandemic.

Employers subject to such law included:

- Airports,
- Airport hospitality operation,
- Airport service providers,
- Building service (janitorial, security, or building maintenance),
- Enterprises,
- Event centers,
- Hotels, and
- Private clubs.

SB 93 mandated that when an employer was in need of hiring, that employer must, within five business days (excluding weekends and holidays) of establishing a position, offer its laid-off employees in writing, either by hand or to their last known physical address, and by email and text message to the extent the employer possesses such information, all job positions that become available after April 16, 2021 for which the laid off employees are qualified. A laid-off employee was qualified for a position if the employee held the same or a similar position at the enterprise during the employee's most recent layoff with the employer.

Initially, SB 93 was in effect until December 31, 2024. However, last year, California enacted **SB 723**, which extended the expiration date to **December 31, 2025**. SB 723 further added a presumption that a separation due to a lack of business, reduction in force, or other economic, non-disciplinary reason is related to the COVID-19 pandemic, unless the employer proves otherwise by a preponderance of the evidence.

What is AB 858?

AB 858 further extends the expiration of the right to recall laid-off workers in certain industries until **January 1, 2027**.

It continues to provide that no employer can refuse to employ, terminate, reduce compensation, or take other adverse action against any laid-off employee for seeking to enforce their rights under these provisions.

An aggrieved laid-off employee may file a complaint with the Division of Labor Standards Enforcement for specified relief, including hiring and reinstatement rights, front pay or back pay, the value of benefits the employee would have received under the employer's benefit plan, and/or a civil penalty. There are no criminal penalties.

Which Industries are Affected?

The following types of employers remain subject to this law:

- Airport,
- Airport hospitality operation,
- Airport service provider,
- Building service (janitorial, building maintenance, or security services),
- Enterprises,
- Event centers,
- Hotels, and
- Private clubs.

What Must Qualified Employers Do?

Qualified employers must continue to offer their laid-off employees in writing (in person or to their last known physical address ***and*** by email and text message), if the employer possesses such information.

This must be done within five days of establishing an open position. When there is more than one laid-off person entitled to the position, the employer must offer it to the employee with the greatest length of service based on the employee's date of hire.

After an employee is offered a position, the employer must allow them a minimum of five business days to accept or decline.

Record Keeping Rules Remain in Place

Since the April 19, 2021, enactment of SB 93, an employer must maintain records for three years, including:

- records of communications regarding the date of the written notice of each layoff;
- the employee's full legal name;
- the employee's job classification at the time of separation from employment;
- the employee's date of hire; the employee's last known address of residence;
- the employee's last known email address;
- the employee's last known telephone number; and

- a copy of the written notices regarding the layoff provided to the employee and all records of communications between the employer and the employee concerning offers of employment made to the employee pursuant to these laws.

What Does this Mean for Employers?

Qualifying employers need to continue what they have been doing for laid-off workers for at least one more year. This means ensuring their record-keeping on hiring and rehiring is well-documented and saved for a minimum of three years.

Employers must also continue to evaluate laid-off employees when they are ready to post a new position and are prepared to hire, and follow the proper procedure for contacting these laid-off employees to avoid any compliance violations.

Day 7: *Privacy, Privacy, Privacy*

On the seventh day of the holidays, my labor and employment attorney gave to me seven swans a-swimming and **SB 446** and **AB 566**.

California has long been at the forefront of consumer privacy protections, beginning with the California Consumer Privacy Act (CCPA) and expanding under the California Privacy Rights Act (CPRA). AB 446 was recently enacted and provides additional notification requirements related to consumer privacy, with **AB 566** creating additional requirements for websites and "opt-out" provisions.

Background

Any individual or business that owns or licenses computerized data containing personal information must disclose a data security system breach to any affected California resident following discovery or notification of the breach.

Under existing law, California's data breach notification laws did not include any specific deadlines. Rather, the law noted that disclosure must be made "in the most expedient time possible and without unreasonable delay," a standard that lacked a firm deadline and left room for interpretation and delay.

What Does SB 446 Do?

As of **January 1, 2026**, California's data breach notification law will include specific deadlines for when entities must notify individuals, as well as the state Attorney General, after discovering a breach of security involving

personal data.

This change replaces the more vague "expedite without unreasonable delay" standard with a clear timeline designed to ensure consumers receive timely notice. Moving forward into 2026, disclosure to affected individuals must be made within 30 calendar days of discovery or notification of the data breach. Notification may be delayed if it would potentially impede a criminal investigation.

In addition, **SB 446** provides that when an individual or business is required to issue a security breach notification to more than 500 California residents as a result of a single breach of the security system, the individual or business must submit a sample copy of the security breach notification, excluding any personally identifiable information, to the Attorney General within 15 calendar days of notifying affected consumers of the security breach.

What Constitutes a Breach?

A **"breach of the security of the system"** is defined as the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the individual or business.

"Personal information" is defined as items such as the following:

- Social Security Number;
- Driver's license number;
- California identification card number;
- Tax identification number;
- Passport number;
- Military identification number;
- Account number;
- Credit or debit card number;
- Any security codes, access codes, or passwords associated with an individual's financial account;
- Medical information;
- Health insurance information;
- Genetic data; or
- Unique biometric data.

Key Requirements Under SB 446

SB 446 outlines numerous requirements as to what a notice must contain, how it should be provided, as well as optional provisions.

1. What is the Format of a Notice?

- It must be in plain language and entitled “Notice of Date Breach.”
- It must include the following headlines:
  - What Happened?
  - What Information was Involved?
  - What Are We Doing?
  - What You Can Do
  - For More Information

2. What are the Contents of a Notice?

A notice per SB 446 must contain certain pieces of information, including the following:

- The name and contact information of the reporting individual believed to have been the subject of the breach;
- A list of the types of personal information that were reasonably believed to have been the subject of a breach;
- If known, the date of the breach, the estimated date of the breach, or the date range within which the breach occurred;
- Whether the notification was delayed as a result of a law enforcement investigation, if known;
- A general description of the breach incident, if known;
- The toll-free numbers and addresses of the major credit reporting agencies if the breach exposes Social Security Numbers or driver’s license, or California identification card numbers; and
- An offer to provide appropriate identity theft prevention and mitigation services if the individual or business providing the notification was the source of the breach, advising that it shall be provided at no cost to the affected individual for no less than 12 months.

In addition, an individual or business may include optional information in the notice, including any of the following:

- Information about what the individual or business has done to protect individuals whose information has been breached; or
- Advice on steps that affected individuals may take to protect themselves; or
- Instructions on how to notify other entities that use the same type of biometric data as an authenticator to no longer rely on that data for authentication purposes.

How a Notice Must Be Provided

The notice must be provided either by written notice, electronic notice, or substitute notice. Substitute notice can be used if the individual or business demonstrates that the cost of providing notice would exceed $250,000 and the affected class of subject persons to be notified exceeds 500,000 people, or if the individual or business does not have sufficient contact information. If a substitute notice is used, it must include the following:

1. Email notice when the individual or business has an email address for the subject persons.
2. A conspicuous posting, for a minimum of 30 days, of the notice on the internet website page of the individual or business, if the individual or business maintains one.
3. Notification to major statewide media.

AB 446 defines a **"conspicuous posting"** means providing a link to the notice on the home page or first significant page after entering the internet website that is in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the link.

AB 566 Requirements

AB 566 takes effect on **January 1, 2027.** The California Consumer Privacy Act of 2018 (CCPA) grants consumers various rights with respect to personal information that is collected or sold by a business, including the right to direct the business that sells or shares personal information about consumers or third parties not to sell or share the consumer's personal information specified.

AB 566 specifically prohibits a business from developing or maintaining a browser that does not include functionality configurable by the consumer that enables the browser to send an "opt out" preference signal to businesses with which the consumer interacts through the browser.

A business will be required to make it clear to consumers in its public disclosures how the opt-out preference signal works and the intended effect of the opt-out preference signal. A business that develops or maintains a browser including this functionality will have immunity from liability for a violation of these provisions. In essence, this bill allows California residents to opt out of the sale of their browsing data in a single instance, instead of having to opt out of data sales on every website they visit.

Implications of AB 566

While the law is set to take effect on **January 1, 2027**, it does not specify the exact opt-out mechanism that browser developers must use. It also does not address how to properly inform consumers, how the universal opt-out mechanism will work, and/or how browsers will address multiple opt-out signals.

It is anticipated that the opt-out provision will likely result in a loss of advertising spending, along with jobs and taxes. It appears, as of now, that there will be a disproportionate harm to small businesses. As this law is not in effect until 2027, it is anticipated that additional issues will be raised in 2026.

Next Steps for Employers

First and foremost, employers must be diligent about protecting their employees' personal information by implementing compliance measures, including the following:

- Ensure HR and IT staff are trained on California's privacy laws in addition to maintaining effective security to protect computerized data.
- Have an incident response plan of action as it relates to data breach protocols, as well as to know and understand the new deadlines employers will be required to follow if a data breach occurs.
- While not every employer will experience a data breach, an employer could prepare a data breach notification form in advance in case one occurs. Ensure that all consumer and regulatory notices are reviewed by your outside counsel prior to distribution.
- In the event of a breach, immediately notify your outside counsel to ensure the post-breach investigation is protected by the attorney-client privilege.
- It is also recommended that employers ensure that their cybersecurity teams, whether internal or external, perform periodic checks to ensure that the security of the computerized data is in compliance with privacy laws.
- Advise the cybersecurity and/or IT teams of the upcoming changes in the "opt-out" provisions that take effect in 2027 so that websites can be updated accordingly.

If you are interested in receiving updates on our writing on privacy and cybersecurity topics, consider subscribing to our *Privacy, Cyber & AI Decoded* Alerts.

Subscribe Here

Day 8: *Equal Pay Act Updates*

On the eighth day of the holidays, my labor and employment attorney gave to me eight maids a-milking and **SB 642**.

SB 642, also referred to as the Pay Equity Enforcement Act, provides a significant update to California's pay equity and pay transparency landscape that will take effect on **January 1, 2026.** It specifically expands worker protections, clarifies employer obligations, and strengthens enforcement mechanisms aimed at closing persistent pay gaps.

Background

California's Pay Transparency Law, enacted in 2022, prohibits an employer from paying an employee wages less than rates paid to employees of the opposite sex, race, or ethnicity for substantially similar work.

It further requires employers to provide employees with a pay scale for positions, as well as to include pay scale information in job postings. It also precludes employers from either seeking an applicant's prior salary history or relying upon it as a factor in determining what salary to offer an applicant. However, if an applicant voluntarily discloses the salary history, the employer may consider and/or rely upon that information in determining the salary for that applicant.

The Pay Equity Enforcement Act, effective January 1, 2026, specifically expands worker protections, clarifies employer obligations, and strengthens enforcement mechanisms aimed at closing persistent pay gaps.

Updated Definitions

- **"Pay scale"** was previously defined as the salary or hourly wage range the employer reasonably expected to pay for a position. With AB 642, "pay scale" is now defined as a good-faith estimate of the salary or hourly wage range the employer reasonably expects to pay for the position upon hire.
- In addition, **"wages"** and **"wage rates"** include, but are not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. This definition applies only to this law and does not apply to other provisions of the Labor Code.
- **Further, SB 642 now prohibits pay disparity between an employee of "another sex"** versus the previous wording of "opposite sex." With this change, SB 642 now includes and protects non-binary genders as well.

When Must Pay Scale Information Be Provided?

An employer is required to provide pay scale information in the following instances.

1. When an applicant applying for a position requests it;
2. When a current employee requests it for the position in which the employee is currently employed;
3. When the employer has 15 or more employees, and they post an available position; and
4. When the employer has 15 or more employees and uses a third party to issue a job posting.

What Constitutes a Violation?

Per SB 642, a cause of action occurs in any of the following instances:

- An alleged unlawful compensation decision or practice is adopted;

- An individual becomes subject to an alleged unlawful compensation decision or other practice; or
- When an individual is affected by the application of an alleged unlawful compensation decision or other practice, including each time wages, benefits, or other compensation are paid, resulting in whole or in part from the decision or other practice.

Statute of Limitations

Previously, a civil action to recover wages under the Equal Pay Law needed to be filed within two years after the cause of action occurred, or within three years if it arose out of a willful violation. The enactment of SB 642 extends that timeframe to three years after the last date the cause of action occurred.

SB 642 further provides that an employee is entitled to obtain relief for the entire time the violation exists, but not to exceed six years. The six-year look back is significant and creates extra record-keeping needs for the employer.

SB 642 requires employers to maintain records of wages and wage rates, job classifications, and other terms and conditions of employment for employees for three years. However, with the six-year look back, records should seemingly be kept longer than required.

Additionally, an aggrieved employee may file a written complaint with the Labor Commissioner within one year after learning about the violation. The complaint must detail the alleged violation.

Penalties

The Labor Commissioner may order a civil penalty of $100 per violation and up to $10,000. The Commissioner must take into account any prior violations when determining the civil penalty amount.

Any employer that violates this law is also liable to the employee for any wages the employee was deprived by reason of the violation, in addition to interest and an additional amount as liquidated damages.

Takeaways and Next Steps

- With the new definition of "pay scale," employers are now required to provide a realistic and honest estimate of what an applicant can expect to be paid at the start of employment rather than a broad or speculative range. **As such, it is recommended that all job postings be carefully reviewed and audited moving forward.** The ranges posted in 2025 will likely not meet the standard required in 2026.
- Due to the expanded employee protections, proper job classification is more important than ever, and **classifications should be reviewed to verify each employee is in the correct category.**
- **Further, human resources should be trained on the new definitions and requirements to minimize risk.**
- **In addition, employers should evaluate their recordkeeping process to ensure, at a minimum, they are maintaining three years of data.** Employers should also evaluate whether they wish to maintain more than

three years' worth of records due to the new six-year look-back period.

- **Lastly, employers need to evaluate more than wages to ensure equitable pay for their employees and avoid potential violations or lawsuits.** A review of compensation practices is highly recommended to ensure compliance.
- **More importantly, employers with questions should contact their employment lawyer to discuss their compensation practices** and to engage in privilege in order to create a compliant compensation practice.

Day 9: *Additional Penalties for Non-Payment of Wages*

On the ninth day of the holidays, my labor and employment attorney gave to me nine ladies dancing and **SB 261**.

SB 261 aims to prevent wage theft by enhancing the enforcement of unpaid wage judgments, imposing stricter penalties on non-compliant employers, and allowing public prosecutors to intervene in these cases. It also introduces successor liability, holding companies that acquire or merge with employers responsible for their unpaid wage judgments.

What is SB 261?

Wage theft occurs when an employer fails to pay an employee all wages due. This has been a serious and persistent problem in California. Even when employees win administrative or court judgments for unpaid wages, many employers delay payment or refuse to pay altogether.

SB 261 strengthens enforcement of unpaid wage judgments and expands penalties on employers who fail to pay what they owe to employees. It takes effect on **January 1, 2026**, and is designed to make it harder for employers to evade payment of court judgments for unpaid wages.

SB 261 also authorizes public prosecutors to intervene and help enforce unpaid wage judgments, providing an additional avenue to compel compliance from a delinquent employer.

Additionally, the law includes successor liability, meaning that companies acquiring or merging with an employer that has unpaid wage judgments can also be held responsible for those judgments.

Expanded Penalties

Before the enactment of SB 261, an unpaid judgment was subject to simple interest as well as court costs and reasonable attorneys' fees for enforcing a judgment. The legislature opined that this was inadequate to deter prospective violators, and SB 261 was drafted.

SB 261 mandates a civil penalty to be assessed, not to exceed three times the outstanding judgment, including post-judgment interest then due, if the final judgment remains unsatisfied after a period of 180 days.

A final judgment exists when the decision is no longer appealable or no appeal is pending. In cases where the final judgment remains outstanding after 180 days, this penalty is automatic, unless the employer can demonstrate good cause with clear and convincing evidence to reduce it. The law remains silent on what constitutes clear and convincing evidence to reduce this penalty.

Employers should also take note that this penalty is in addition to any other penalties or fines permitted by law.

Distribution of Penalty Payment

When a penalty is assessed and collected under SB 261, it must be distributed in a defined manner as follows:

1. **50 percent to the employee or employees in whose favor the judgment was rendered;** shared proportionally according to the amount due to each employee; and
2. **50 percent to the Division of Labor Standards Enforcement to supplement funding for the administration of this law,** as well as education for both employers and employees about their rights and responsibilities under this Code.

Attorney Fees and Costs

SB 261 also mandates that a prevailing plaintiff be awarded all reasonable attorneys' fees and costs in any action brought by a judgment creditor, the Labor Commissioner, or a public prosecutor to enforce a final judgment arising from nonpayment of wages. This is in addition to the civil penalty described above.

Key Takeaways for California Employers

- **First and foremost, employers must pay employees their proper wages.** That is the only surefire way for an employer to protect itself from these types of claims and penalties.
- **If, or when, a non-payment of wage issue/claim comes to light, contact your employment counsel immediately** so a proper investigation can be done with attorney-client privilege attached.
- **If a wage discrepancy is found, resolve the wage claim promptly and accurately.** If, for any reason, a judgment is assessed for the nonpayment of wages, employment counsel should be contacted immediately, and the employer and/or counsel must monitor the payment deadlines to avoid this type of penalty.
- **It is further recommended that the employer do one of the following upon receiving notice of a judgment:**
    - Determine if you have clear and convincing evidence of good cause why the judgment was not paid; and

- Attempt to reach an amicable settlement with the employee regarding the claim for nonpayment of wages; or
- Pay the judgment within 180 days to avoid the extensive penalties.

Day 10: *Tip Theft…No, No, No*

On the tenth day of the holidays, my labor and employment attorney gave to me ten lords a-leaping and **SB 648**.

California continues to expand wage-and-hour enforcement, and **SB 648** represents a notable development for employers with tipped workforces. Effective **January 1, 2026**, SB 648 enhances the enforcement authority of the California Labor Commissioner with respect to gratuity violations, increasing the compliance risk associated with improper tip practices.

Background

Although California law has long provided that gratuities belong exclusively to employees, SB 648 significantly alters the enforcement mechanism, making it easier for the state to investigate and penalize employers for noncompliance.

Under existing law, employers are prohibited from collecting, retaining, or distributing employee tips in a manner inconsistent with Labor Code Section 351. **Labor Code Section 351** provides that any tip provided to an employee is the sole property of the employee or employees to whom it was paid, given, or left for.

It is illegal for an employer to collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity. Further, an employer cannot require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.

When an employer permits patrons to pay gratuities by credit card, the employer must pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.

Payment of gratuities made by patrons using credit cards shall be made to the employees no later than the next regular payday following the date the patron authorized the credit card payment.

What Does SB 648 Do?

Under SB 648, the Labor Commissioner may now:

- Investigate gratuity violations;
- Issue administrative citations for tip theft; and
- Pursue civil penalties using the same enforcement tools applied to minimum wage violations.

This expanded authority increases the likelihood of audits, investigations, and penalties—even where the dollar amounts involved are relatively small.

Employer Responsibilities

Employers must maintain separation between wages and tips. As clearly delineated in Labor Code Section 351, wages and tips cannot be combined, and tips cannot be used to offset minimum wage, overtime, or any other compensation obligations. Tips are extra and solely the property of the employee.

In order to maintain the separation, employers should ensure that:

- Tips are not reported as employer-paid wages;
- Wage statements clearly distinguish tips from wages; and
- Accounting practices do not commingle gratuities with payroll funds.

Employers should also require that management personnel, including but not limited to supervisors, managers, and/or anyone with involvement in payroll, be trained on lawful tip practices such as:

- Eligibility for participation in tip pools;
- Prohibited uses of gratuities; and
- How to respond to employee questions or complaints regarding tips.

Tip pools may be used in certain situations, so long as the tip pooling policy is not used to compensate an owner, manager, or supervisor of the business. In California, they are generally used in the restaurant industry, and the courts have validated policies that distribute tips among the employees who provide "direct table service" or who are part of the "chain of service." However, the policy must be fair and reasonable in how it is distributed to the various employees.

Any training on gratuity policies should be documented. Also, as noted in the Day 3 post above, training documentation should be incorporated into the employee's personnel file as well.

Recordkeeping

SB 648's expanded enforcement authority makes accurate recordkeeping essential. Employers should retain:

- Tip distribution records,
- Tip pool calculations,

- Payroll documentation, and
- Written gratuity policies acknowledged by employees.

Any of these records may be requested during a Labor Commissioner investigation or citation proceeding.

Key Takeaways for Employers

- **Employers should review all written and operational policies related to gratuities,** including tip pooling arrangements, distribution practices, and management participation. Any policy that permits supervisors or managers to receive tips should be carefully evaluated for compliance.
- **Tip policies should clearly articulate how tips are collected, pooled (if applicable), and distributed,** and should be communicated consistently to employees.
- **Maintain a tip policy** that does not have any deductions for credit card processing fees.
- **Invest and/or maintain a payroll and point-of-sale system** that accurately tracks tips and timely distributes the same.
- **Perform periodic audits of gratuity systems**, policies, and/or practices to ensure compliance.
- **Verify all managers and supervisors are trained on proper gratuity handling.**
- **Maintain accurate documentation and recordkeeping.**
- **Investigate any employee complaints regarding gratuities promptly. Early** internal resolution may mitigate the risk of escalation to a formal administrative complaint or enforcement action.

Day 11: *Labor Relations for Gig Drivers*

On the eleventh day of the holidays, my labor and employment attorney gave to me eleven pipers piping and **AB 1340**.

AB 1340 takes effect as **of January 1, 2026**, and establishes a path for qualified gig drivers, who are classified as independent contractors, to organize and collectively bargain. It is known as the Transportation Network Company Drivers Labor Relations Act.

Background

AB 5

- **AB 5** went into effect as of January 1, 2020. The law made it more difficult for employers to classify workers as independent contractors and was aimed at protecting gig economy workers by requiring the "ABC test"

for employment status.
- There were numerous industry exemptions outlined in AB 5, with more exemptions added over the years. However, gig drivers were not one of them. The failure to provide gig drivers an exemption under AB 5 carried over to the 2020 statewide general election with Proposition 22.

Proposition 22

- **Proposition 22**, also known as the Protect App-Based Drivers and Services Act, was approved by voters on November 3, 2020, in the statewide general election, holding that app-based drivers for network companies, as defined, are independent contractors if certain conditions are met.
- Proposition 22 also required that network companies provide a healthcare subsidy to qualifying app-based drivers, provide a minimum level of compensation for app-based drivers, and not restrict app-based drivers from working in any other lawful occupation or business.
- Certain provisions were deemed invalid based on separation of powers grounds and invalidated per case law. However, the court severed the unconstitutional provisions, allowing the rest of the initiative to remain in effect.

What Does AB 1340 Do?

AB 1340 contains numerous provisions relating to what additional rights gig drivers have as of January 1, 2026, including:

- The right to form, join, and participate in driver organizations;
- The right to bargain collectively through representatives of their own choosing with Transportation Network Companies (TNCs);
- Having a state-run framework for union elections, certification, and dispute resolution;
- Requirement that TNCs must negotiate in good faith with certified driver unions; and
- Procedures for mediation and arbitration when negotiations stall.

AB 1340 further mandates that the Public Employment Relations Board serve as the governing board for AB 1340 to address issues involving overseeing union certification, elections, and unfair practice claims.

Despite the new rights allowed to gig drivers, AB 1340 *does not* alter their status as independent contractors under Proposition 22. Gig drivers remain classified as independent contractors.

Who Does AB 1340 Cover?

Not everyone who drives for a transportation network company will be considered an active TNC driver. **AB 1340 provides the following relevant definitions:**

- **"Active TNC driver"** means a transportation network company (TNC) driver who has driven at least the minimum number of rides during the past six months (20 rides) with a covered TNC's platform.
- **"Transportation network company"** or **"TNC"** is an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with TNC drivers using a personal vehicle.
- **"Transportation network company driver"** or **"TNC driver"** means any person who uses a personal vehicle in connection with a TNC's online-enabled application or platform to connect with passengers in the state pursuant to the TNC license of the TNC. It does not include any individual who is considered an employee under the NLRB or federal law.

Drivers who qualify as active TNC drivers are able to create a transportation network company driver organization, otherwise known as a "TNC driver organization." **AB 340 defines it as an "organization" with all of the following characteristics:**

1. The organization has engaged in advocacy for drivers who transport passengers in California, or is affiliated with an organization that has engaged in advocacy for drivers who transport passengers in California, for a minimum of five years.
2. The organization has experience, or is affiliated with an organization that has experience, in negotiating collective bargaining agreements and representing workers under those agreements, including the representation of workers in filing unfair labor practice charges and in grievance proceedings.
3. The organization has as one of its main purposes the representation of workers in their labor relations.
4. The organization's bylaws or other internal governing documents will give TNC drivers the right to be members of the organization and to participate in the democratic control of the organization if the bargaining unit chooses to be represented by the organization.
5. The organization is not sponsored by, dominated by, or controlled by a transportation network company.
6. The organization is not a company union.

Requirements of a TNC

AB 1340 further provides a variety of reporting requirements for TNCs:

- Within two weeks after the end of each calendar quarter, commencing on January 1, 2026, and at the completion of every three months thereafter, each TNC shall electronically submit to the board a single statewide total of the rides performed during the prior quarter by TNC drivers on its online-enabled application or platform.
    - All TNCs under common ownership or control shall be considered to be a single TNC. Failure to submit the required data will result in the Board issuing a complaint charging the TNC with an unfair practice and petitioning a court for temporary relief to compel production of the list.

- Within two weeks after the end of each calendar quarter, commencing with the quarter ending on March 31, 2026, each covered TNC shall submit the following items to the board:
    - the name, driver's license number, and, to the extent known by a TNC, the most recent email address, local residence and mailing addresses, cellular telephone number; and
    - the TNC driver's first date joining the platform and the number of rides the TNC driver completed in the previous six months for each TNC driver who has completed at least 20 rides within the State of California within the prior six months.

What Constitutes an Unfair Practice?

AB 1340 provides multiple examples of unfair practices that TNCs can be held accountable for such as:

- Failure or refusal to provide the board with a list containing the information required under AB 1340 or knowingly providing an inaccurate list or inaccurate information;
- Failure or refusal to negotiate in good faith with a certified driver bargaining organization, as required;
- Failure or refusal to provide a certified driver bargaining organization with information required by the organization that is relevant and necessary in discharging its representational duties or in exercising its right to represent TNC drivers regarding terms and conditions of work within the scope of representation;
- Dominating or interfering with the formation, existence, or administration of any TNC driver organization, or contributing financial or other support to any such organization, whether directly or indirectly, unless required by this act or other law, by any regulations implementing this act or other law, or as a result of a sectoral agreement approved by the board, including, but not limited to, by doing any of the following:
    - Participating or assisting in, supervising, or controlling the initiation or creation of any such organization or the meetings, management, operation, elections, or formulation or amendment of the organization's constitution, rules, or policies;
    - Offering incentives to TNC drivers to join any such organization;
    - Donating free services, equipment, materials, offices, meeting space, or anything else of value for use by any such organization, unless those items have been negotiated as a benefit or service for TNC drivers in a sectoral agreement approved by the board.
- Requiring a TNC driver to join any company union or TNC driver organization or requiring a TNC driver to refrain from forming, joining, or assisting a TNC driver organization of their choice;
- Encouraging or discouraging membership in any company union or in any TNC driver organization by discriminating with regard to any term or condition of work;
- Discharging, deactivating, or otherwise discriminating with regard to the ability of a TNC driver to obtain rides, or otherwise discriminating against a TNC driver, because they have signed or filed any affidavit, petition, or complaint under this chapter, have given any information or testimony under this chapter, have participated or declined to participate in a TNC driver organization, or have exercised any rights under this chapter;

- Distributing or circulating any blacklist of individuals exercising any right created or confirmed by this chapter or of members of a TNC driver organization, or informing any person of the exercise by any individual of that right or of the membership of any individual of a TNC driver organization for the purpose of preventing those blacklisted or named individuals from obtaining or retaining opportunities for remuneration; or
- Interfering with, restraining, or coercing TNC drivers in the exercise of rights under this act.

Penalties

In addition to any other remedy provided by law, a TNC found to have committed an unfair practice in failing to provide the required information under AB 1340 shall be subject to a civil penalty, not to exceed ten thousand dollars ($10,000) per day, for each day after the deadline that the list was not provided.

The amount of the penalty shall be determined by the board by utilizing the following criteria:

- The size of the TNC;
- The severity of the violation; and
- Any prior history of violations by the TNC.

In addition to the penalty above, a TNC could also be required by the board to pay the board's attorney fees and costs for any court proceeding initiated by the board to compel production of the list.

Key Takeaways

It is recommended that any companies that qualify as a TNC should be aware of what constitutes an unfair practice and the reporting compliance that takes effect as of **January 1, 2026.**

Similar to prior laws affecting gig drivers, it is anticipated that there will be challenges to AB 1340, including, but not limited to, preemption. TNCs should continue to monitor any challenges.

Day 12: *The California Version of the NLRB*

On the twelfth day of the holidays, my labor and employment attorney gave to me twelve pipers piping and **AB 288**.

With the enactment of **AB 288**, California joins New York in allowing state agencies the ability to assume powers previously handled solely by the National Labor Relations Board (NLRB). AB 288 seemingly emerged in response to a significant backlog and functional disruption at the NLRB, which has left many labor disputes unresolved for months.

Background

The California legislature argued that workers should not be forced to wait indefinitely for federal action and that the state should have a mechanism in place to protect fundamental rights, such as collective bargaining and freedom of association.

AB 288 specifically delineates that the NLRB has become less effective at protecting and enforcing workers' rights, due to a variety of factors such as completely inadequate funding, understaffing, a narrowing of the types of workers who can invoke the protections of the NLRA, a narrowing of the scope of protected concerted activity, and its enforcement mechanisms are further threatened with the loss of decision making due to a lack of a quorum with its administrative proceedings being enjoined through challenges to its constitutionality and its independence.

California utilizes the **Public Employment Relations Board (PERB)** as a means of resolving disputes and enforcing the statutory duties and rights of specified public employers and employees under various acts regulating collective bargaining. PERB currently has the power and duty to investigate an unfair practice charge and to determine whether the charge is justified and the appropriate remedy for the unfair practice.

On a federal level, the National Labor Relations Act (NLRA) establishes a comprehensive statutory scheme regulating unfair labor practices by employers and labor organizations in industries affecting interstate commerce, and vests in the NLRB the power to conduct elections to determine employee representatives and to prevent unfair labor practices that affect commerce.

What Does AB 288 Do?

AB 288 makes it quite clear that California intends to ensure that all workers in the state can effectively exercise their fundamental rights to full freedom of association, self-organization, and designation of representatives of their own choosing, free from retaliation or intimidation by their employer.

Specifically, AB 288:

- Empowers PERB to step into a role traditionally held by the NLRB in specific circumstances;
- Allows private-sector employees covered by the NLRA to petition PERB when the NLRB cannot or does not act on claims of unfair labor practices or representation petitions in a timely way;
- Authorizes PERB to adjudicate labor issues, including, but not limited to, Unfair Labor Practices (ULPs), representation elections, bargaining orders, and to impose civil penalties if federal processes are stalled;
- Establishes the Public Employment Relations Board Enforcement Fund where any assessed civil penalties are deposited to be used to administer AB 288 provisions;
- Authorizes PERB to rely on its own decisions and precedent under the NLRA;
- Authorizes review of a PERB decision by a state appellate court; and

- Allows PERB to maintain confidentiality of sensitive documentation and evidence.

Who Does AB 288 Apply To?

AB 288 applies to employers who operate in unionized or union-organizing environments.

For a worker to petition PERB to enforce their collective bargaining rights, the worker must meet the following requirements:

1. Be employed in a position that is, or would have been, subject to the National Labor Relations Act as of January 1, 2025, but they lose coverage under the National Labor Relations Act because it is repealed, narrowed, or its enforcement enjoined in a case involving that worker; or
2. Be employed in a position that is or would be subject to the National Labor Relations Act as of January 1, 2025, but the National Labor Relations Board has expressly or impliedly ceded jurisdiction.

The NLRB will be deemed to have ceded jurisdiction if any of the following are met as of January 1, 2026:

- **Where a certification of the results of an election, including a certification of representative, or administrative law judge decision has been issued**, or where challenges or objections to a representation election are pending before the National Labor Relations Board, when there is a lack of a quorum of the National Labor Relations Board, or when the Board has lost its independence as a result of the US Supreme Court finding that National Labor Relations Board members are unconstitutionally protected from removal or when the continued processing of a case is enjoined by a court due to constitutional challenges to the board's structure or authority;
- **Where no certification or complaint or decision has been issued**, when there are processing delays resulting in the worker's case remaining pending before a regional director for more than six months without the issuance of a complaint or certification of an election, or remaining pending more than six months after a complaint has been issued without the issuance of a decision by an administrative law judge or without the issuance of a decision about the certification by the National Labor Relations Board;
- **Where a certification of the results of an election, including a certification of representative, or other reviewable order has been issued** by the regional director or administrative law judge, when there are processing delays resulting in failure by the National Labor Relations Board to accept or decline review or grant special permission to appeal for more than six months following the filing of a request for review or for special permission to appeal; or
- **Where cases on review or exceptions before the National Labor Relations Board,** when there are processing delays resulting in the case remaining pending for more than 12 months without the issuance of a final decision.

What Can PERB do?

AB 288 provides PERB with the ability to do any of the following:

- Conduct elections to determine whether a majority of workers in an appropriate bargaining unit have selected an exclusive representative for purposes of collective bargaining;
- Promptly certify an exclusive bargaining representative by determining whether a majority of workers in an appropriate bargaining unit have selected an exclusive representative for purposes of collective bargaining, and order that an employer bargain with that exclusive bargaining representative.
    - Selection may be demonstrated through a previous certification by another state or federal agency, or through an election, or through other legal processes recognized by the Public Employment Relations Board or the National Labor Relations Board at the time the selection is made, or through a written designation. This shall include the ability to resolve pending objections or voter eligibility challenges in an election previously pending with the National Labor Relations Board;
- Order that an employer bargain with an exclusive bargaining representative and otherwise decide unfair labor practices and order all appropriate action and remedies;
- Order that an employer submit to binding arbitration to assist the parties in finalizing their negotiations for a collective bargaining agreement if the National Labor Relations Board or the Public Employment Relations Board has certified an exclusive bargaining representative, or if an employer has voluntarily recognized the exclusive bargaining representative of a group of workers, and more than six months have passed without the parties agreeing on and executing a collective bargaining agreement; or
- Order any appropriate remedy, including injunctive relief and penalties, necessary to effectuate this section, including if an employer refuses to comply with an order under this section.

Penalties

PERB has the power to order any and all relief for a violation of AB 288, including civil penalties. If an employer engages in a pattern or practice of committing unfair practices, PERB may assess civil penalties of $1,000.00 per worker per violation.

Key Takeaways for California Employers

First and foremost, AB 288 appears to create overlap with dual enforcement of federal and state law, which is likely to cause confusion as well as increased legal costs. Covered employers may also see labor relations claims moving at a quicker pace due to the new PERB abilities.

The NLRB has already filed a legal challenge to AB 288, arguing that it infringes upon federal authority over private-sector labor relations. As such, covered employers must monitor the enforcement of AB 288 as it may not withstand the legal challenge.

Notwithstanding the legal challenge, employers should do the following:

- Review labor relations policies to ensure they are up to date and legally sound;
- Ensure managers and HR teams are trained under both federal and state law and understand what constitutes unlawful interference with union activities;
- Train managers and HR teams on what constitutes unlawful interference with union activities;
- Train staff on how to document and handle union-related communications; and
- Consult labor counsel early when there is an issue and/or question.

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