# Centricity Solutions Quarter 4 2022 Newsletter


## New Federal Protections for Pregnant and Nursing Workers

On December 29, 2022, President Biden signed into law the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), expanding federal protections for both pregnant and nursing workers.

The PWFA creates a legal obligation for employers to grant reasonable accommodations for pregnant workers. Under the new law, which will not go into effect until June 2023, employers with 15 or more employees will be required to provide reasonable accommodations for "qualified" employees and applicants with temporary physical or mental limitations due to pregnancy, childbirth or related conditions. Employees and applicants are "qualified" if they, with or without a reasonable accommodation, can perform the essential functions of the employment position. An individual is still "qualified" if the inability to perform an essential function is for a temporary period, the essential function could be performed in the near future, and the inability to perform the essential function can be reasonably accommodated. The PWFA, like the Americans with Disabilities Act (ADA), obligates employers to provide reasonable accommodations unless doing so imposes an undue hardship. The PWFA incorporates the ADA concept of the "interactive process" – the good faith discussion between the employer and employee to try to identify an appropriate reasonable accommodation. Under the new law, employers will be prohibited from requiring a qualified employee or applicant to accept an accommodation other than one arrived at through the interactive process. An employer may also not require an employee to take a paid or unpaid leave if another reasonable accommodation can be provided. Retaliation against a qualified employee or applicant for requesting a reasonable accommodation under the law is also prohibited. Previously, under federal law, most courts determined that pregnancy was not considered a disability entitled to a reasonable accommodation under the ADA. Rather, employers were only required to provide reasonable accommodations when an individual's pregnancy, childbirth, or related medical condition rose to the level of a disability under the ADA or when accommodations were made for other similarly situated, but non-pregnant, workers. The PUMP Act, which amends the Fair Labor Standards Act (FLSA) (effective immediately with the exception of certain changes regarding remedies), requires that employers provide (1) reasonable break time for an employee to express breast milk each time the employee has a need to express the milk for one year after the child's birth and (2) a place, other than a bathroom, that is shielded from view and free from intrusion in which the employee can express breast milk. While the Affordable Care Act of 2010 (AFCA) amended the FLSA to provide these protections to non-exempt employees, the PUMP Act extends the protections to all employees, non-exempt and exempt, unless specifically excluded, with a need to express breast milk. An employer is generally not required to provide a paid break under these amendments; however, the PUMP Act re-emphasizes the FLSA principle that time spent to express breast milk is considered "hours worked" if the employee is not completely relieved from duty during the entirety of the break. If an employee continues to work, or is interrupted during the break, then the non-exempt employee must be paid for the entire break (and exempt employees continue to receive their full weekly salary regardless of any break). Notably, the PUMP Act does not apply to employers with fewer than 50 employees if certain requirements under the law would cause an undue hardship. Keep in mind that many state and local laws already provide similar or greater protections and accommodation requirements for pregnant and nursing workers. These Acts do not preempt any state and local laws that provide more generous protections.

Melo, C and Halevy, A. (2023, January) New Protections for Pregnant and Nursing Workers in 2023. Retrieved from https://www.natlawreview.com/article/new-protections-pregnant-and-nursing-workers-2023

### Introducing the Go1 Digital Learning Platform

As part of our transition to Rippling, we are now utilizing Rippling's Learning Management System for compliance with anti-harassment training requirements; however, harassment prevention courses only scratch the surface of what Rippling's LMS has to offer. In addition to the 24 pre-loaded courses available with your LMS subscription, you also have access to the Go1 catalog of over 70,000 diverse courses. These courses are available for purchase and implementation at your discretion and your Centricity team is available to assist. You can access the Go1 catalog, here.

# New California Workplace Laws for 2023

## *CFRA and Sick Leave Expansion to Cover Care of "Designated Person" – AB 1041*

AB 1041 expands the California Family Rights Act ("CFRA") and California's paid sick leave law (the Healthy Workplaces, Healthy Families Act of 2014) to allow covered employees to take leave to care for a "designated person."

Under CFRA, employers with five or more employees must permit covered employees to take up to a total of 12 workweeks in a 12-month period for family care and medical leave. The class of people an employee could take leave to care for under CFRA previously included individuals with whom the employee had specific relationships (i.e., spouse, child, parent, etc.), but will now also include a "designated person." The new law defines "designated person" as an individual who is related by blood to the employee or whose association with the employee is the equivalent of a family relationship. An employee requesting to take CFRA leave to care for a designated person may identify the designated person at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period. The bill also amends the California paid sick leave law to permit the use of sick leave to care for a "designated person." In particular, the definition of "family member" will now include a designated person, which for sick leave purposes simply means a person identified by the employee at the time the employee requests to take paid sick leave. As with CFRA, the employer may limit an employee to one designated person per 12-month period for purposes of the paid sick leave law.

Employers should review leave policies and update them to permit use of CFRA and paid sick leave to care for a designated person of the employee's choosing. Ensure that HR or any other person(s) tasked with administering family and medical leave and sick leave requests are made aware of the update.

## *Notice of COVID Exposure – AB 2693*

Currently, within one day of learning about a positive COVID case in the workplace, employers are required to provide written notice of potential exposure to all employees who were on the premises at the same worksite as the COVID case. AB 2693 extends the notice requirement to January 1, 2024 and provides that an employer may now satisfy the notice requirement by prominently posting a notice that includes the dates on which an employee with a confirmed case of COVID was on the premises within the infectious period, and the location of the exposure. The notice must remain posted for 15 days in a location where workplace rules and regulations are usually posted, as well as on an employee portal (if applicable). Employers must also keep a log of all the dates the notice was posted at each of its worksites and allow the Labor Commissioner to access these records. We recommend updating your COVID notification procedures to account for the fact that the exposure notice requirement can now be satisfied via a posting. Your Centricity HR partner can guide you through the process of building and sending a notice.

## *Protections for Reproductive Health Decision Making – SB 523*

SB 523, the Contraceptive Equity Act of 2022, amends various California laws to further the goal of decreasing sexual and reproductive health disparities and ensuring greater health equity in contraceptive care. Most relevant to employers is the addition of "reproductive health decision making" to the list of protected classes under the California Fair Employment and Housing Act. Furthermore, the new law makes it unlawful for an employer to require, as a condition of employment, continued employment, or benefit of employment, that an applicant or employee disclose information relating to their reproductive health decision making. The new law also states that discrimination based on "sex" includes discrimination based on reproductive health decision making. "Reproductive health decision making" is defined to include, without limitation, a decision to use or access a particular drug, device, product, or medical service for reproductive health. Work with your Centricity HR partner to review EEO, anti-harassment, and anti-discrimination policies and expressly include "reproductive health decision making" as a protected characteristic.


## *Bereavement Leave – AB 1949*

AB 1949 amends CFRA to add a new bereavement leave requirement. Employers with five or more employees will now be required to provide employees employed for at least 30 days with up to five days of bereavement leave upon the death of a family member. The leave must be used within three months of the date of death and does not need to be taken on consecutive days. Employers may require that the employee submit documentation of the death of the family member within 30 days of the first day of the leave.

The new law provides that the bereavement leave will be taken under an employer's bereavement leave policy, if one already exists, and specifies how to coordinate the new bereavement leave requirement with an existing bereavement leave policy, as follows:

- If an existing policy provides for fewer than five days of paid bereavement leave, the remainder of the days may be unpaid, and an employee may use other accrued paid leave available to the employee to cover those days.
- If an existing policy provides for fewer than five days of unpaid bereavement leave, the employee will nonetheless be entitled to at least five days of unpaid bereavement leave and may use other accrued paid leave available to the employee to cover those days.

If there is no existing policy, then the five days of bereavement leave may be unpaid, and an employee may use other accrued paid leave available to the employee to cover those days.

Employers should immediately revise existing bereavement leave policies as needed or prepare a new policy. Note that employees are permitted to take the bereavement days off non-consecutively.

Rashby, C., Lu, N. (2022, December) New California Workplace Laws for 2023. Retrieved from https://www.insidecompensation.com/2022/12/13/new-california-workplace-laws-for-2023/

# More Workplace Legislation Impacting Business in 2023

### *Off-Duty Cannabis Use Protections – AB 2188*

Effective January 1, 2024, AB 2188 will make it unlawful under the California Fair Employment and Housing Act for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, based on:

- The person's use of cannabis off the job and away from the workplace; or
- An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites.

Notably, nothing in the new law permits an employee to possess, be impaired by, or use, cannabis on the job, or affects employer rights or obligations to maintain a drug- and alcohol-free workplace. The new law does not apply to employees in the building and construction trades, or to applicants or employees hired for positions that require a federal background investigation or security clearance under applicable federal law. Employers should review workplace drug policies and practices to ensure that such policies do not penalize employees for off-duty cannabis use or based on a drug screening that has indicated the existence of nonpsychoactive cannabis metabolites in the employee. Employers should also refrain from inquiring about covered employees' use of cannabis off the job and away from the workplace.

### *California's 2022 COVID-19 Supplemental Paid Sick Leave Expired on December 31, 2022*

California's 2022 COVID-19 Supplemental Paid Sick Leave (2022 SPSL) law expired on December 31, 2022. It is important to note that workers taking 2022 SPSL as of December 31, 2022 could have continued to take the leave they were on even if the entitlement extended past December 31, 2022. For example, an employee who exhibited symptoms and was recommended to isolate on December 28, 2022 could have continued to utilize the 2022 SPSL they would be entitled to even if that isolation was required to extend into January 2023, and be paid for the time according to the requirements of the 2022 SPSL law.

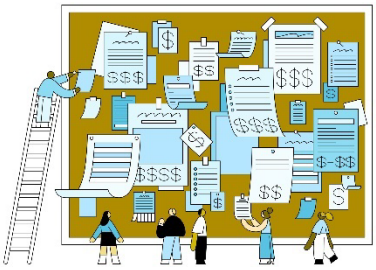
After December 31, 2022, workers who were not paid the SPSL they were entitled to when they were unable to work in 2022 due to COVID-19 can still request pay from their employer or file a claim with the Labor Commissioner. Any violations of the law during the period the law covered (January 1, 2022 through December 31, 2022) will continue to be enforced This means if you had a claim for a violation of the law that occurred on or prior to December 31, 2022, your claim will be processed. It is best to file it as soon as possible so that it does not face a challenge based on you filing it late. Generally, the period to file a claim based on a statute like paid sick leave is up to three years after the violation occurred.

Paid sick leave through the California Healthy Workplaces, Healthy Families Act of 2014 may provide leave to workers for preventive care, diagnosis, care, or treatment of an existing health condition, among other purposes, for themselves or family members.

# Pay Transparency Law Now in Effect in California

As reviewed in our Q3 Newsletter, California's SB1162 went into effect on January 1, 2023, requiring employers with 15 or more employees to post the salary or hourly wage scale for any position posted internally or externally. Below are some highlights to help your company comply with these new requirements. Keep in mind that the requirements extend to third-party posting boards such as LinkedIn, Monster, and Indeed.

SB1162 doesn't delineate how a national job posting should be handled if the person hired was a resident of California. We recommend erring on the side of caution and including the wage scale for any posting open nationally. Additionally, companies with 100 or more employees, additional reporting requirements are expanded to include pay data including race, sex, and ethnicity information for all contract employees hired through labor contractors.



***What to Do Now***

- Determine the pay scales for the positions of employees currently working at your company. If an employee requests the pay scale for their given position, employers covered under SB1162 must provide it.
- Make pay adjustments for any pay discrepancies with current employees, as needed.
- Update all job postings to include pay scales for both internal and external positions, including third-party posting boards and websites.
- If you have a multi-state operation, you might consider developing a strategy to address all of these at the same time. It is just a matter of time before other states and jurisdictions follow suit.

Rashby, C., Lu, N. (2022, December) New California Workplace Laws for 2023. Retrieved from https://www.insidecompensation.com/2022/12/13/new-california-workplace-laws-for-2023/
CalChamber. (2022, December) Local Minimum Wage Increases January 1, 2023. Retrieved from https://advocacy.calchamber.com/2022/12/07/local-minimum-wage-increases-january-1-2023/?

# 401(k) Contributions and Catch-Up Limits Increase in 2023

Employee 401(k) contributions for 2023 will top off at $22,500—a $2,000 increase from the $20,500 cap for 2022—the IRS announced today. Plan participants age 50 or older next year can contribute an additional $7,500, up $1,000 from 2022.

The limit on total employer-plus-employee contributions to defined contribution plans will increase to $66,000 in 2023, up by $5,000 from $61,000 in 2022.

The IRS announced the 2023 adjustments for 401(k) and similar defined contribution plans, and for defined benefit pension plan, in Notice 2022-55. Inflation is at its highest level since 401(k) annual indexing began, causing 7 percent to 11 percent increases for most 2023 limits

# California Minimum Wage and Exemption Threshold Increases for 2023

Beginning January 1, 2023, the California state minimum wage will be $15.50 per hour for all employers, regardless of size. This state minimum wage rate is also used to determine the salary threshold for the administrative, executive, and professional exemptions — the threshold is two times the statewide minimum wage. This means, for 2023, you will need to ensure all exempt employees earn at least $64,480 per year. In jurisdictions without a local minimum wage ordinance or with a local wage rate that is lower than the California state minimum wage, the state minimum wage rate will apply.

Several local minimum wage rate increases go into effect on January 1, 2023. A full list of cities with increases is available here.

# Compliance for California Employers Under California Privacy Rights Act

California employer's reprieve from obligations to employees to disclose data privacy practices and provide access rights to employees appears to be coming to an end as the California Privacy Rights Act (CPRA) becomes effective on January 1, 2023. Notably, the CPRA will eliminate the California Consumer Privacy Act's (CCPA) exemption for employee personal information. As a result, nearly all businesses with employees who are California residents, including those non consumer facing businesses who have not previously been subject to the CCPA, will need to implement internal policies, procedures and mechanisms to ensure compliance.

**Requirements Businesses Should Implement in 2023**

**Notice at Collection**: Currently under the CCPA, businesses are required to provide employees and job applicants a notice at collection explaining the types of personal information collected and the purposes for which such information will be used. Businesses should update these notices with the additional required disclosures, including information about rights, retention periods, and personal information disclosed by employers (for example, to service providers).

**Responding to Employee Requests to Exercise Rights:** The CPRA grants to employees the same rights consumers currently enjoy under the CCPA (including the right to know, the right to delete, the right to non-discrimination for exercising rights, and the right to opt-out of the sale of personal information, as applicable). Additionally, the CPRA also adds consumer rights like the right to correct inaccuracies in personal information collected, the right to opt-out of sharing1 personal information, and the right to limit the use and disclosure of sensitive personal information.

**Contracts with Service Providers:** Businesses should review agreements in place with any vendors that handle employee personal information to ensure they include the CPRA's required clauses.

The California Privacy Protection Agency (CPPA), the agency established by the CPRA responsible for enforcement and rule-promulgation, is expected to publish its final implementing regulations for the CPRA later this year. Centricity will continue to monitor updates.

# The Speak Out Act Impacts Nondisclosure Agreements

Employers may need to adjust their practices and policies to comply with the Speak Out Act, which invalidates nondisclosure agreements (NDAs) and nondisparagement agreements designed to keep employees from discussing instances of sexual harassment and sexual assault. President Joe Biden signed the law on Dec. 7, 2022, and it took effect immediately. It's common for employers to require employees to sign nondisclosure and nondisparagement clauses during hiring, in severance agreements and in legal settlements. During the last several years, the #MeToo movement revealed that NDAs were often used to hide repeated sexual harassment and assault by executives or other high-profile employees, preventing victims from talking about the misconduct publicly. The new law is designed to stop companies from covering up misconduct. It applies only to nondisclosure and nondisparagement agreements signed before a dispute arises, not after. With the new law, there's greater risk to employers in brand damage and career risk for executives, said Stephen Paskoff, CEO of the workplace training company ELI in Atlanta and a former employment law litigator. That's why it's important to "focus on getting people to prevent the underlying issues that necessitate arbitration and NDAs. Settlements that pay people off won't be as potent as they were in the past." Companies are increasingly including clauses in CEO contracts that allow for termination without severance pay in cases of sexual harassment, discrimination and violations of company policies, according to a 2021 study from the University of Florida's Levin College of Law. This contractual language strengthens the ability of companies to hold leaders accountable for bad behavior. In March 2022, Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which bans pre-dispute arbitration agreements covering sexual assault or sexual harassment disputes. Several states, including California, Illinois, Maine, New Jersey, New York, Oregon and Washington, recently passed laws banning the use of NDAs in cases of sexual harassment or sex discrimination.


**Practical Steps for Employers**

We recommend having a legal professional review any existing NDAs to ensure compliance with new legislation. Mishell Parreno Taylor, an attorney with Akerman in Houston recommends adding language stating that the NDA "only applies to the extent allowed by the law" and doesn't apply in cases of sexual harassment and sexual assault. Legally speaking, online harassment is just as serious as in-person harassment. Make sure workers understand that instant messages, texts and e-mails "can be a vehicle for inappropriate conduct," Taylor said. "[People] are just more casual with that form of communication." One of the goals in using NDAs is to prevent employees from revealing trade secrets.


The Speak Out Act "does not limit an employer's ability to protect trade secrets and proprietary information," Taylor said. "I think that's very important."

Opposite Column: Pittman, P. (2022, October) Upcoming California Privacy Rights Act: Key Compliance Tasks for California Employers. Retrieved from https://www.whitecase.com/insight-alert/upcoming-california-privacy-rights-act-key-compliance-tasks-california-employers#:~:text=California%20employer's%20reprieve%20from%20obligations,effective%20on%20January%201%2C%202023.
Fidelity (2022. December) 401(k) contribution limits for 2022 and 2023. Retrieved from https://www.fidelity.com/learning-center/smart-money/401k-contribution-limits#:~:text=401(k)%20contribution%20limits%20for%202023,combined%20employee%20and%20employer%20contributions.
Above: Shepherd, L. (2023, January) Preventing Harassment in Light of the Speak Out Act. Retrieved from https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/speak-out-act-compliance.aspx?utm_source=marketo&utm_medium=email&utm_campaign=editorial~HR%20Daily~NL_2023-01-09_HR-Daily&linktext=Preventing-Harassment-in-Light-of-the-Speak-Out-Act&mktoid=91041484&mkt_tok=ODIzLVRXUy05ODQAAAGJNkdbzd5Hs2vuzc0qdqa_YRF3a5w8za-MYF_YrlZ41yEM0aGEpI_oZr3nLxkeir8J68BdsutSe9IocFgSiBgHUAaIUvUvHmzf6AJ5n2Eezsa2Bv-1