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What's New for 2022?

Labor Law Update

Presented by
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We will be covering:

- Wage & Hour Updates
- CFRA, Posters, Record Retention, CalSavers
- Safety and COVID -19
- New & Unique Laws







Wage and Hour Updates



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7

2022 State Minimum Wage

January 1st	Small Employer	Large Employer
	25 or fewer	26 or more
→ 2022	\$14.00	\$15.00
2023	\$15.00	\$15.00



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January 1, 2022 Local Minimum Wages Increases

- 27 local minimum wage **increases** effective **January 1, 2022**
- Additional 16 local minimum wage **increases** effective as of **July 1, 2022**
- **West Hollywood**, for the first time in 2022, has added minimum wage and paid/unpaid time off requirements
- Check CEA website for **complete list** of local minimum wage rates and sick time/paid time off requirements - [bit.ly/2022 Local Min Wages](https://bit.ly/2022_Local_Min_Wages)

Pro Tip: Don't forget to pay attention to where your remote employees are located!



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Salaried Exemption Increases

Small Employers: **25** or fewer employees
Large Employers: **26** or more employees

Exempt Salary

January 1, 2022 \$58,240/\$62,400
January 1, 2023 \$62,400/\$62,400

*Duty and Salary Test (2 x State min wage x 2080 hours) **BOTH** must be met!*



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Licensed Medical and Computer Professionals



Physicians/Surgeons:

Minimum hourly pay for licensed physicians / surgeons increased from \$86.49 to **\$91.07**



Computer Software Professionals:

- Minimum hourly rate of pay increased from \$47.48 to **\$50.00**
- Minimum monthly salary increased from \$8,242.32 to **\$8,679.16**
- Minimum annual salary increased from \$98,907.70 **\$104,149.81**



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Proper Payment Deal Breakers

- Review all **local minimum wage requirements** where you have workers, including remote/hybrid employees.
- **No "use it or lose it"** vacation policies allowed in California.
- **No "off the clock"** pre- and post-shift activities (closing down store, locking up, etc.)
- Owners, managers and supervisors **cannot participate** in a **tip pooling** program.



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Increased Wage Theft Penalties

Intentional – "Knowledge that the wages, gratuities, benefits, or other compensation is due to the employee under the law."

- The **intentional** theft of wages, including gratuities is now "**grand theft**" under the Penal Code as amended by AB 1003.
- **Applies when**, in a 12-month period:
 - The amount is greater than **\$950** from any one employee / independent contractor
 - The amount is greater than **\$2350**, in the aggregate, from two or more employees / independent contractors.



Wage Theft – Consequences

Why does this change matter?

Grand theft is generally **punishable** either as:



- A **misdemeanor** by imprisonment in county jail for up to 1 year
- A **felony** by imprisonment in county jail for 16 months or 2 or 3 years.



Wage Theft – What Employers Should Do

- Ensure Proper Procedures**
Make sure supervisors follow proper timekeeping, minimum wage, and overtime requirements
- Review Policies**
Review tip / gratuities policies.
- Audit Payroll Provider**
Ensure compliance by your payroll provider



Employee or Independent Contractor ABC Test Overview

ABC Test presumes all workers are employees unless the worker:

- A. is free from **control** and **direction** of the hirer,
- B. performs work that is **outside the usual course** of the hiring entity's business, **AND**
- C. is customarily engaged in a trade, occupation, or business of the **same nature** as the work performed.

Penalties: \$5,000 to \$15,000 for each violation
\$10,000 to \$25,000 per violation for a pattern and practice



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So Many Exceptions

- Examples of exceptions for **certain workers** (not inclusive):
 - Attorneys
 - Architects
 - Engineers
 - Travel agents
 - Physicians, surgeons, dentists, podiatrists, psychologists, and veterinarians
- Examples of exceptions for **certain businesses** (not inclusive):
 - Business to Business: Employers who contract with other **businesses** for services or goods.
 - Construction: Contractors and individuals working for a licensed business. Has a separate location and meets other criteria (including written contract).



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Independent Contractor Clarifications

- AB 1506/1561 clarify **exemptions** for:
 - **Data aggregator** and a research subject
 - **Insurance industry** (including claims adjusting or third-party administration work)
 - Manufactured housing salespersons
- **Extends** the sunset dates on the exemptions granted to newspaper carriers, licensed manicurists and construction trucking subcontractors to **January 1, 2025**.



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Mileage Reimbursement

IRS standard mileage rates for the use of a car (also vans, pickups, or panel trucks) for 2022 is:

- 58.5 cents per mile driven for business use





Employer Takeaways: Wage & Hour

- ✓ Check your county and city minimum wage laws, including for remote workers
- ✓ Make \$ increases where and when necessary (evaluate industry standards as well)
- ✓ Ensure your exempt employees meet both the salary and duty tests (and properly classify ICs).
- ✓ CEA Members access our new Wage and Hour Checklist!
- ✓ Payroll audit for 2022 and beyond: Do your salaried employees still meet the test?



CFRA, Posters, Record Retention, and CalSavers



CFRA – Employers Covered, Employee Eligibility

Provides up to **12 weeks** of unpaid leave with benefits within specified **12-month** period

- Covered employers: **5 or more** employees
(Jan. 1, 2021 change)
- An employee is **eligible** for CFRA if:
 - Worked **12 months** for employer and **1250 hours** in prior 12 months

IMPORTANT: Employers must have a CFRA policy, poster, and use mandatory forms



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	2020 and before	Jan. 1, 2021 & 2022
Covered Employer	50+ employees	5+ employees
Eligible Employee	1. Employed 12 months, 2. Worked 1250 hours, 3. Works at location with 50 + employees in 75 mile radius	1. Employed 12 months 2. Worked 1250 hours
Reasons for Leave	To care for: self, children, parents, and spouses/registered domestic partners, and baby bonding.	Same PLUS: adult children (over 18), children of registered domestic partners, grandparents, grandchildren, and siblings; parent-in-law.
Reinstatement Rights	Guaranteed unless "key employee"	Guaranteed
Both Parents at Same Employer	12 weeks of time off to share	12 weeks per parent



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CFRA – Covered Reasons

Baby Bonding 	Own Health Condition 	Family in Armed Forces 	Family Care 
Birth of child, adoption or foster care (baby bonding)	Employee's own serious health condition (includes workers' comp, not pregnancy)	Exigency – family member on active duty status with Armed Forces	Care for family member with serious health condition



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CFRA for 2022 – What Has Changed?

AB 1033 Amendments

- **“Parent-In-Law”** now a covered family member.
- For small employers (5 to 19 employees), they may participate in DFEH’s **mediation pilot program** for alleged CFRA violations.
- DFEH now required to **notify an employee**, who requests an immediate right-to-sue letter alleging CFRA violations, of the **requirement for mediation**.



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CFRA for 2022 – What Employers Should Do



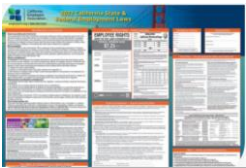
- ✓ Update **CFRA policy** to include “parent-in-law” as a covered family member.
- ✓ Update **CFRA leave forms** to include “parent-in-law” as a covered member.
- ✓ **Poster updates.**



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Posters / Electronic Notices



- SB 657 allows employers provide posters required under the **Labor Code** electronically for telecommuting employees.
 - **Proceed with caution:** This relaxed requirement does not apply to all employment notices.
- Recommended that those who order **“all-in-one”** labor law posters still mail hard copies to remote workers, as they include notices in addition to Labor Code requirements.



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Record Retention Requirements

SB 807 expands certain employer **record retention requirements** from 2 years to **4 years**.

- Employers, employment agencies, and labor organizations must now retain **all** applications, personnel, membership, or employment referral **records** and files for a minimum of **4 years** from the date the records were **created**, or the date the employment **action** was taken.
- **Tolls** (or puts “on hold”) **statute of limitations** for certain civil claims while there is ongoing DFEH investigation.



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CalSavers – Small Employer Deadline

- CalSavers Retirement Savings Program (CalSavers) is a state-run retirement savings program for private sector employees whose employers do **not** offer a **retirement program**.
- An employer with at least **5 employees** that does not already offer a qualified workplace retirement savings plan is required to register with CalSavers by **June 30, 2022**.



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CalSavers - Employer Obligations

- **Register** by the deadline
- **Set up** a payroll list/**add** employees
- Ensure employees receive CalSavers **packet**
- **Deductions**/contributions
- Ongoing **maintenance**



Side Note: For 2022, 401(k) contribution limit rises to **\$20,500** (\$1,000 increase) and **\$6,500** more for age **50+**.



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30

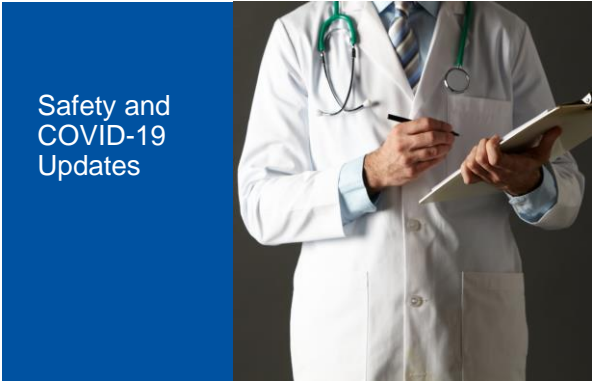
Employer Takeaways: Policies, Practices, Records

- ✓ Update **CFRA** policy and forms
- ✓ Are your **posters** up to date? *(available on CEA's website, on the store tab)*
- ✓ Ensure managers are trained on protected **leaves** and proper **record retention**.
- ✓ Small employers – be prepared for CalSavers **deadline**.



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FAQ

We drafted our Injury and Illness Prevention Plan a number of years ago. I'm not sure when we last updated our handbook. Does it really matter?



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Cal/OSHA Authority – What Changed

SB 606 creates a rebuttable presumption that a violation by an employer that has **multiple worksites** is **enterprise-wide**, in two circumstances:

- If the employer has a **written policy or procedure** that violates the law; or
- Cal/OSHA has evidence of a **pattern or practice** of the same violation involving more than one worksite.



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Cal/OSHA Authority *(continued)*

- An “enterprise-wide” violation is subject to **willful or repeated conduct penalties**.
- SB 606 also creates a new definition and penalty for an “**egregious violation**” which includes when an employer intentionally made no reasonable effort to eliminate a known violation.



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Cal/OSHA Authority – What Employers Should Do

- ✓ Work with counsel or safety expert to review policies
- ✓ Update Injury and Illness Prevention Plan
- ✓ Update COVID-19 Prevention Plan



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COVID-19 Prevention Plan

- Still obligated to implement and maintain a **written** "COVID-19 Prevention Program."
- 11 separate **requirements**.
- Can be part of your IIPP or separate document
 - **updated** template available from Cal-OSHA (on our website).

Complete this ASAP if you now have onsite workers!



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COVID Workplace Standards Updates

- Cal/OSHA readopted its current **emergency temporary standard** ("ETS"), with some **amendments** effective from **January 14, 2022** through **April 14, 2022**.
- Following CDC changes, **CDPH** updated its isolation and quarantine guidelines. On Jan. 6th, Cal/OSHA clarified in [FAQs](#) exclusion periods will align with CDPH for workers.
 - Per Executive Order N-84-20
 - CEA Members: Refer to our **COVID Exposure Tool Kit** or give us a call at 800.399.5331!



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General Exclusion Rules

Everyone Who Tests Positive or Exposed:
Wear a face covering around others for a total of 10 days after positive test or exposure, especially in indoor settings.

Tests Positive: Exclude for 5 days. Can come back after Day 5 if **test negative** (on day 5 or later) + **symptoms resolving**. If do not test, can come back after Day 10 if symptoms resolving.

Exposed (Unvaccinated): Exclude for 5 days. Can come back after Day 5 if **test negative** (on day 5 or later) + **no symptoms at all**. If do not test, can come back after Day 10 if no symptoms at all.



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General Exclusion Rules Cont.

Everyone Who Tests Positive or Exposed:
Wear a face covering around others for a total of 10 days after positive test or exposure, especially in indoor settings.

- Exposed (Vaccinated, No Booster):** Does not need to isolate if:
- A negative diagnostic test is obtained within 3-5 days after last exposure;
 - Continue to be symptom free; **and**
 - Wear a face covering for at least 10 days.

Exposed (Vaccinated + Booster): Does not need to isolate at all, but must test negative at Day 5 and wear a face covering for at least 10 days. If unable to test, must wear a face covering and social distance for at least 14 days.



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Face Coverings

Cal/OSHA clarified that **acceptable face coverings** include:

- Surgical masks;
- Medical procedure masks;
- Respirators worn voluntarily;



- Tightly woven fabric or non-woven material of at least two layers that completely covers the nose and mouth and is secured to the head with ties, ear loops, or elastic bands that go behind the head;
- Gaiters with two layers of fabric or folded to make two layers.
- ***Fabric masks must not allow light to pass through.***

Remember: Employers must provide acceptable face coverings or reimburse employees for this cost!



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Public Health Notices

- SB 336 Requires California Department of Public Health (CDPH) and local health officers to publish **COVID-19 order** or mandatory guidance on website.
- Also required to allow employers and others to sign up for an **email distribution** list to receive orders/guidance.
- Aimed at ensuring employers have **easy access** to COVID-19 workplace mandates.



Check agency websites where you have workers!



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Mandates: Vaccines and COVID Testing

CDPH Orders:

- Healthcare employers (public and private) are **required** to mandate the vaccine.
- Including the **booster shot** by Feb 1st (or within 15 days of becoming due for the booster shot, if after Feb. 1st).
- Also **required** for workers in adult and senior care facilities and those employed in in-home direct care settings.
 - Unless the person qualifies for a **religious** or medical **exemption**.
- Other groups are required to undergo **weekly COVID-19 testing** if **not** fully vaccinated (i.e., dental offices, school personnel, most state workers).



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OSHA ETS (100+ Employees) – Covered and Excluded

Who is Covered?

Private employers with **100 or more employees** corporate-wide.



Covered employers required to establish a written policy **mandating vaccination OR requiring unvaccinated workers to undergo weekly COVID-19 testing and wear face coverings**, among other requirements.



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OSHA ETS (100+ Employees) – Compliance Deadline?

When is Compliance Required?

- Due to 5th Circuit ruling there was a “**stay**” on the OSHA ETS.
- Cases brought against OSHA were consolidated before the 6th Circuit. The 6th Circuit **lifted the stay**.

New Deadlines per OSHA:

- Policy Requirements: **January 10**
- Vaccine or Test: **February 9**

Before US Supreme Court. Oral Argument Was On Jan 7th.



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OSHA ETS (100+ Employees) – What Employers Should Do

What else?

- Determine **vaccination status** of each employee, retain documentary records, and maintain a roster of employees' vaccination status
- Provide up to **4 hours of paid time off** for each vaccine dose and **"reasonable" paid sick leave** for vaccination side effects.
- Provide employees **specific information**, outlined in the ETS
- CEA members can access our **COVID-19 Leaves of Absence Tool Kit** for required steps and sample forms.

Expected update from Cal/OSHA!



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Expiring Rules?



- I-9 Remote Inspection Flexibility – extended to **April 30, 2022**
- Worker Notification of COVID Exposure – **Jan. 1, 2023**
- Workers' Compensation Presumption – **Jan. 1, 2023**



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New & Unique Laws



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Warehouse Distribution Centers

- Per AB 701, covered employers: **100** or more **employees** at a single warehouse distribution center or **1,000** or more **employees** at one or more warehouse distribution centers in California.
- Must provide each **nonexempt employee** upon hire with written description of:
 - **Each quota** including quantified number of tasks or materials to be produced within the defined time; and
 - List any **potential adverse action** that may result from failure to meet quota
 - Quota must **not prevent compliance** with meal, rest, recovery periods, bathroom breaks, or health and safety laws.



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Garment Manufacturers

- SB 62 **eliminates piece rate pay** as a legal method of payment for non-unionized workers in garment manufacturing.
-
- Imposes statutory damages of **\$200** per employee/per pay period in which an employee is paid by piece rate.
 - Expands joint and several liability for wage violations to the entire **garment manufacturing supply chain**.



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FAQ

I downloaded a settlement agreement I found on the internet, and edited it accordingly. Is this okay?



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Settlement Agreements – What Has Changed?

- When **non-disparagement** provisions are involved, employer must exclude employee's ability to discuss conduct the employee **believes** was **unlawful**.
- Extends prohibition on **confidentiality** provisions in settlement agreements to **all discrimination**—not just sex.
- **Note:** Employer can require settlement amount (\$) be kept confidential.



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Settlement Agreements – What Employers Should Do

- ✓ Work with **legal counsel** to ensure settlement agreements are **compliant**.
- ✓ Do not alter previous agreements without speaking to legal counsel. Law is **not retroactive**.



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Final Reminders

Things To Do:

- ✓ Attend [upcoming LLUs](#) for legal updates (especially mid-year);
- ✓ Update Employee Handbook/Policies; 2022 updates for CEA members available [here!](#)
- ✓ [Harassment Prevention Training](#) – due every 2 years (2022 deadline for those trained in 2020!)

Things to Watch Out For:

- ✓ Cal/OSHA COVID-19 Emergency Temporary Standard Updates (around April)
- ✓ Increased paid sick leave to 5 days? (AB 995)
- ✓ Mandatory bereavement leave? (AB 95)
- ✓ "Designated person" for CFRA Leave? (AB 1041)



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56



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