



Supporting Employers Since 1940

# 2023 – Labor Law Update



WORRY-FREE IN '23

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## MCWDB Business Services

We help businesses stabilize, strengthen, and grow!

### RECRUITMENT

- Job & Career Fairs
- Customized Recruitment
- Job Boards &
- Other Promotional Activities

### TRAINING

- Incumbent Worker Training
- On-the-Job Training
- Layoff Aversion

### RESOURCES & OTHER SERVICES

- Micro Business Grants
- Human Resources Hotline
- Resources & Referrals for Business Solutions
- Rapid Response: Employee and Employer Support during Downsizing



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We are here to help you succeed!

## Contact us today!

Jerry Hernandez  
Phone: (831)755-5393

Email: [hernandezj1@co.monterey.ca.us](mailto:hernandezj1@co.monterey.ca.us)  
Website: <https://www.montereycountywdb.org>

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We will be covering:

- Pay transparency & required disclosures
- New leave laws
- Wage & hour updates, including minimum wage/exempt salary minimums
- Industry-specific laws



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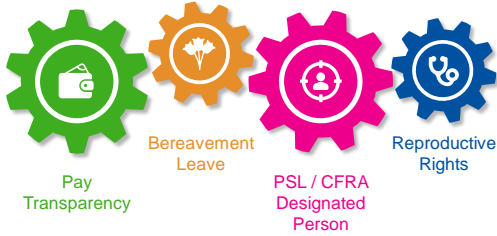
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## Employee Rights, Leaves, and Benefits



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## SB 1162: Pay Transparency

**All Employers:**

- Must provide the **pay scale** (i.e., salary or hourly wage range) to any **current employee** for their current position **upon request**.
  - Need not include bonuses, tips, etc.
- Must maintain **records** of a **job title** and **wage rate history** for each employee during employment and for **three years after their separation**.

**15 or More Employees:**

- Must include the **pay scale** for a position in any **job posting**, including when using third-party recruiters.



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# Pay Transparency: Next Steps

- ✓ Be sure to create records of **job title/wage rate history** for each employee, starting January 1, 2023 and forward.
- ✓ Ensure proper **record retention** – duration of employment and 3 years after end of employment.
- ✓ Employers with 15 or more employees (and at least one employee located in CA) must **update hiring practices/job postings** and ensure contracted third-party recruiters follow the new law.
- ✓ Consider **compensation surveys** to stay competitive.

**Pro Tip:** Remember, the law already requires all employers to provide the pay scale for a position to an applicant upon **reasonable request** (i.e., after the initial interview).



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# You and Your Organization



Did your company include pay scales in job postings **prior** to the passage of the new law?



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# AB 1949: Bereavement Leave

- Employers with **5 or more** employees must provide eligible employees up to **5 days of unpaid bereavement leave** upon the death of a covered family member.
- Eligible employees: employed at least **30 days** before the leave.
- Employees must use leave **within 3 months** of date of death.
- Employees are **not** required to use the time **consecutively** (i.e., can be intermittent).
- Employer may request appropriate documentation (e.g., death certificate, published obituary, etc.).

**Pro Tip:** Don't forget to update your policy and forms!



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## Bereavement Leave *(continued)*

- Leave is **unpaid**, but employee may elect to use vacation, sick, PTO, etc. (Also, employer policy may provide for paid leave time – check your policy.)
- Employer must **maintain confidentiality**.
- Covered **family members**: spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent, grandchild.



**Important Note:** Leave is per death – **NOT** per year



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## CFRA – 5 or more employees

- Provides up to **12 weeks** of unpaid leave and guaranteed reinstatement at the end of the leave.
- **Benefits** continue during leave.
- 12 weeks within specified **12-month** period for eligible employees.
- An employee is **eligible** for CFRA if they have worked **12 months** for employer and **1250 hours** in prior 12 month period.
- CFRA runs **separately** from Pregnancy Disability Leave.

**IMPORTANT:** Covered employers must have a CFRA policy, poster, and use mandatory forms



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## CFRA – Covered Reasons

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



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## AB 1041: PSL/CFRA "Designated Person"

- Employees may use mandatory paid sick leave (PSL) or take leave under the California Family Rights Act (CFRA) to care for a "designated person."
- Employee may designate this person **at time** of the leave request.
- Employer may limit employee to one designated person per **12-month period**.



**Pro Tip:** Don't forget to update your policy and forms!



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## "Designated Person" Defined

### CFRA

A "designated person" is defined as "any individual related by blood or whose association with the employee is equivalent to a family relationship."

### PSL

The definition is even more broad: a "person identified by the employee at the time the employee requests paid sick days."



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## SB 523: Reproductive Rights

- Expands the FEHA to prohibit discrimination against an applicant or employee based on **reproductive health decision-making** – new protected classification.
- **Prohibits** requiring applicants or employees to **disclose** reproductive health decision-making information.
- Reproductive health decision-making is defined to include "a **decision to use or access** a particular drug, device, product, or medical service for reproductive health."

**Pro Tip:** Don't forget to update your policy and forms!



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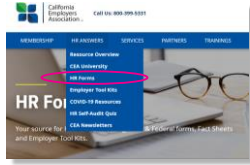
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# 35+ Local Minimum Wage Laws & Counting...

- About **35** local ordinances may apply!
- **Minimum wage**, paid sick leave, predictive scheduling, flex time
- The **local minimum wage** is based on where the employee is *physically* working (e.g., home residence).



URL - [bit.ly/2023\\_Local\\_Min\\_Wage\\_PSL](https://bit.ly/2023_Local_Min_Wage_PSL)



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# You and Your Organization



Is your business impacted by **local** minimum wages?



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# Licensed Medical and Computer Professionals



**Physicians/Surgeons:**  
 Minimum hourly pay for licensed physicians / surgeons increased from \$91.07 to **\$97.99**



**Computer Software Professionals:**

- Minimum hourly rate of pay increased from \$50.00 to **\$53.80**
- Minimum monthly salary increased from \$8,679.16 to **\$9,338.78**
- Minimum annual salary increased from \$104,149.81 to **\$112,065.20**



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# Mileage Reimbursement

- Must **reimburse costs** incurred by employee on behalf of the business, including mileage when personal vehicle is used for work.
- **January 1, 2023:**  
**65.5 cents/mile**




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# Time Rounding Not Recommended!

### Old Rule:

- In the *See's Candy* case (2012), the CA Court of Appeal held that employers may round time entries (e.g., to nearest 5 mins., quarter hour, etc.), so long as the rounding policy is **neutral on its face** and **in application**.
- Required employers to **audit** time records/work with legal counsel to confirm that employees are not being undercompensated on average **over time**.
- A lot of **litigation** in this area!

### New Rule:

- In *Camp v. Home Depot* (2022), CA Court of Appeal held that rounding policy is **NOT** compliant when employee **tracked their exact time in minutes** and records showed employee **was not paid for all time worked** due to rounding policy.
- Court of Appeal invited CA Supreme Court to answer whether rounding policies are permissible when an employee **can** and **has** captured their time.

**Recommendation:** Employers should **stop** time rounding, especially if timekeeping systems record time worked to the minute!

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# Premium Pay

Is premium pay for non-compliant meal/rest breaks considered "wages"?

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# Premium Pay = Wages Naranjo v. Spectrum Security (2022)

Answer: YES, which means:

- Employers **must** include premium pay on **wage statements**.
- Premium pay must be **timely** paid out on the final paycheck, or employer may face **waiting time penalties!**



Make sure you are calculating premium pay correctly – at the **regular rate of pay** – or your final paycheck will be deficient!

Reference CEA Fact Sheet: [bit.ly/Reg\\_Rate\\_of\\_Pay](https://bit.ly/Reg_Rate_of_Pay)

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# Accurate Wage Statements Labor Code § 226(a)

Name and address of legal entity that is the employer <b>SMITH AND COMPANY, INC.</b> 123 West Street, Smalltown, CA 98765		Last four digits of employee's Social Security number or an employee ID number XXX-XX-6789		All applicable hourly rates 18.00 regular 27.00 overtime	Inclusive dates of the pay period 9/13/2021 to 9/19/2021
Name of employee Johnson, Bob	SOCIAL SECURITY NO.	PAY RATE		PAY PERIOD	
EARNINGS		HOURS	AMOUNT	DEDUCTIONS	
Regular		40.00	720.00	Federal W/H 60.45	
Overtime		2.00	54.00	FICA 48.67	
Premium Pay				Medicare 12.36	
				CA State W/H 10.04	
				CA State DI 7.12	
				401k 77.40	
GROSS EARNINGS:			774.00	ACCUALS	PAY PERIOD
TOTAL DEDUCTIONS:			217.04	Paid Sick Leave	+0.46
NET EARNINGS:			556.96		BALANCE
					11.04

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# Employer Take Aways



- ✓ Check your **county** and **city** minimum wage laws
- ✓ **Ensure** you are paying the regular rate for any penalty pay that is required
- ✓ **Reimburse** employees the IRS rate when driving on company business
- ✓ **Audit** your employees' paystubs for compliance

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## Revised I-9 Form

- Current I-9 Form has an expiration date of **October 31, 2022**.
- However, DHS has yet to publish a revised I-9 Form.
- Employers are instructed to continue using the current I-9 form after its expiration date, until further notice.
- DHS will publish a **Federal Register notice** to announce the new version of the Form I-9 once it becomes available.

Follow our blog! - [bit.ly/CEA\\_Blog](https://bit.ly/CEA_Blog)



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## Remote I-9 Flexibilities Extended

- DHS and ICE have extended I-9 flexibilities first announced in March 2020, and updated in March 2021, to **July 31, 2023**.
- As of March 20, 2020, employers/workplaces operating **100% remotely due to COVID precautions** were permitted to verify I-9 documents remotely.
- As of April 1, 2021 (and going forward until the rule's expiration), DHS requires in-person verification only for employees who physically report to work on any **regular, consistent, or predictable basis**.
- As such, employers may continue using **remote documentation** verification for those teleworking as a COVID precaution.



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# SB 1162: Pay Data Reporting

- Private employers with **100 or more employees** (with at least one CA employee) have been required to file a pay data report each year to the **Civil Rights Department** (formerly known as the DFEH).
- SB 1162 **revises** and **expands** requirements related to pay data reporting.



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# Pay Data Reporting Refresher

- The pay data report is based on a **snapshot** of the *previous* year – the employer may choose a **single pay period** between Oct. 1 – Dec. 31.
- For each establishment, the employer must submit a report including the number of employees by **race, ethnicity, and sex** for ten defined **job categories** and defined **pay bands**.
- **calcivilrights.ca.gov** – user guide is available for employers



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# SB 1162: Revised Requirements

- **Covered Employers:** All private employers with 100 or more employees must file the report with CRD (now regardless of whether they are required to file a federal EEO-1 with the EEOC).
- **Information:** Pay data reports must now include *median and mean hourly rates* for each combination of race, ethnicity, and sex within each job category.
- **Deadline:** The second Wednesday of May each year. (First report due May 10, 2023.)
- **New penalties:** \$100 per employee for failure to file; \$200 for subsequent violations.



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## AB 2693: COVID Reporting

- Employers have been required to provide workers notice of potential **COVID-19 exposure** within **one business day** (AB 685).
- AB 2693 revises the worker notification requirements and extends them until **January 1, 2024**.
- AB 2693 removes **requirement to report “outbreaks”** to local public health agencies as of **January 1, 2023**.

**Pro Tip: Be aware of local ordinances!**

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## COVID Reporting *(continued)*

As of January 1, 2023, employers have the option (still within **one business day**) to either:

1. Distribute **individual written notices** to employees and employers of subcontracted employees, or
2. **Post the notice in all places** where the employer customarily posts employee notices (including online portals) for **15 calendar days**.
  - For this option, the employer must keep a log of all dates the notice was posted, and allow the Labor Commissioner access to those records.

**Remember, if distributed, this notice must go to all workers on the premises at the same worksite during the infectious period (not just “close contacts”).**

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# COVID Reporting Notice to Worker

## The worker notice must include:

- The **dates** on which an employee with a confirmed COVID-19 case was **on the worksite premises** within the infectious period,
- The **location(s)** of the **exposure**, and
- **Contact information** to receive information regarding benefits, anti-retaliation/discrimination protections, and cleaning/disinfecting plans.



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# AB 1751: COVID & Workers' Compensation

Extends provisions under SB 1159 until **January 1, 2024**, including, but not limited to:

- Employers must report COVID-19 cases in their workplace to their workers' comp claims administrator in writing within **3 business days** (remember, regardless of whether transmission is "work-related").
- Employees will be **presumed eligible for workers' comp** benefits if their workplace meets the definition of an **"outbreak"** during relevant period:
  - 5 to 100 employees: 4 employees test positive within 14-day period
  - 101+ employees: 4% test positive within 14-day period.



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# Updated "Close Contact" Definitions

		Indoor Spaces	
		400,000 or fewer cubic feet per floor	Greater than 400,000 cubic feet per floor
Examples		Home, clinic waiting room, airplane etc.	Open-floor-plan offices, warehouses, large retail stores, manufacturing, or food processing facilities
	Conditions	Sharing the <b>same indoor airspace</b> as the infected person for a cumulative total of <b>15 minutes</b> or more over a 24-hour period during infectious period.	Being within <b>6 feet</b> of the infected person for a cumulative total of <b>15 minutes</b> or more over a 24-hour period during infectious period.



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# SB 1044: Emergency Conditions

- In the event of an **emergency condition** (i.e. wildfires, floods, etc.) prohibits an employer from taking or threatening adverse action against any employee for **refusing to report to work or leaving the worksite** when the employee has a **reasonable belief it is unsafe**. Emergency condition refers to **natural disasters and criminal acts** – specifically *excludes* health pandemics.
- Also prohibits an employer from preventing an employee **access to their mobile device/communications device for seeking emergency assistance**, communication, assessing safety, etc.
- Consider updates to your **cellphone policy**, as needed.



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# Employer Take Aways



- ✓ Update **Injury & Illness Prevention Program and COVID Prevention Program** as needed
- ✓ Consider whether you will post **COVID worker notification** or continue distributing individual written notices
- ✓ **Continue reporting** COVID cases to your **workers' compensation** carrier within 3 business days
- ✓ **CEA Members:** Refer to our [bit.ly/COVID\\_Exposure\\_Tool\\_Kit](https://bit.ly/COVID_Exposure_Tool_Kit) for updated information/guidance.



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# Industry-Specific Updates



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## AB 257: Fast Food Council

- Creates the **Fast Food Council (FFC)**, within the DIR to set **wages, working hours, and other conditions** for fast food restaurant workers at establishments with **100 or more locations** across the nation. FFC authorized to set wages at \$22/hr for 2023.



- First "**sectorial bargaining law**" in the nation, where an appointed council will set working standards, rather than going through the collective bargaining process.

- **On hold:** Due to a successful ballot referendum, will now be decided on the **November 2024 ballot!**



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## AB 2183: Agricultural Labor Relations

- For five years, essentially establishes a **card check process** for agricultural employees seeking to unionize (as opposed to *secret ballot elections*).



- Huge victory for **labor/unions**.

- Employers have two **options**:

1. Agree to a **labor peace compact** and employees can vote via mail-in ballots. The compact prohibits the employer from making statements for or against the union or conducting captive audience meetings.
2. If not under a peace compact, union can simply **submit authorization cards** signed by a majority of employees to be automatically certified.



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## AB 1601: Relocating Call Center Employees

- **Call center employers** (that employ or have employed within the preceding 12 months, **75 or more persons**) are subject to Cal/WARN requirements prior to a **mass layoff, relocation, or termination** of employees.



- This means that **60-days advanced written notice** is required to employees and to the EDD.



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# Employer Take Aways



- ✓ If unsure, consult legal counsel to determine whether you are a **"covered employer"** for any of these new laws.
- ✓ **Fast food restaurants:** watch out for developments – ballot referendum.
- ✓ **Agriculture:** work with labor relations expert or counsel to determine whether you will agree to labor peace compact.
- ✓ **Call centers:** prepare template WARN notices and familiarize with process



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# What's Next, California Employers?

- ✓ **2023:** Cal-OSHA's "permanent" COVID standard
- ✓ **2024:** New cannabis guidelines



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# Cal-OSHA's Permanent COVID Standard

- On Dec. 15, Cal/OSHA's Standards Board voted to adopt the **"Permanent" COVID Standard**. If made official, it will replace ETS and last for two years.
- Carries over many of the ETS' requirements (subject to some changes), such as **COVID Prevention Program**, **testing requirements**, **additional precautions during outbreaks**, etc.



- **Next Step:** Awaiting approval from the Office of Administrative Law, which may take up to 30 working days. (ETS will remain in effect during this time.)
- If approved, **exclusion pay obligations will end!**
- Follow CEA's blog for updates!



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## AB 2188: New Protected Class: Cannabis Users - **Jan. 1, 2024**

- New protected class under the FEHA for those who use cannabis *off-duty*.
- Employers cannot **discriminate** or take **adverse action** against employee/applicant for using cannabis while **off** the **job** and **away** from the **workplace**.
- Does **not** permit an employee to **possess** or be **impaired** by cannabis while on the job.
- Stayed tuned for more details in 2023.



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## You and Your Organization



Do you currently conduct drug testing at your organization?



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## Final Reminders

- ✓ Update your **employee handbook** for **2023** to comply with new leave policies and employee protections.
- ✓ Ensure compliance with **mandatory poster** updates.
- ✓ Implement **minimum wage** and **exempt salary increases** for 2023 and beyond.
- ✓ Update IIPP, CPP, as needed and **review safety/COVID** guidelines on a ongoing basis.

Follow CEA's Blog ([bit.ly/CEA\\_Blog](http://bit.ly/CEA_Blog)) for more updates!



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# CEA Membership Plans

<b>ULTIMATE</b> <ul style="list-style-type: none"> <li>• HR phone support</li> <li>• Online access to tool kits and forms</li> <li>• Free harassment prevention online trainings</li> <li>• Customized employee handbook (\$2,000 value)</li> <li>• Labor law poster</li> <li>• Consulting hours for compliance projects (8)</li> <li>• 50 point HR assessment</li> <li>• One virtual or onsite compliance training</li> <li>• Dedicated HR partner with quarterly conversations (\$1,000 value)</li> </ul> <p style="text-align: center; color: white;"><b>\$5,995</b></p>	<div style="position: absolute; top: -20px; left: 50%; transform: translate(-50%, -50%); background-color: #f44336; padding: 2px; font-size: 8px; font-weight: bold;">Member Choice</div> <b>PREMIER</b> <ul style="list-style-type: none"> <li>• HR phone support</li> <li>• Online access to tool kits and forms</li> <li>• CEA University</li> <li>• DIY employee handbook*</li> <li>• Labor law poster*</li> <li>• Consulting hours for compliance projects (8)</li> <li>• Online harassment prevention training</li> </ul> <p style="text-align: center; color: white;"><b>\$2,495</b></p>	<div style="position: absolute; top: -20px; left: 50%; transform: translate(-50%, -50%); background-color: #e91e63; padding: 2px; font-size: 8px; font-weight: bold;">Associate Memberships are available as a 39th-month subscription!</div> <b>ASSOCIATE</b> <ul style="list-style-type: none"> <li>• HR phone support</li> <li>• Online access to tool kits and forms</li> <li>• CEA University</li> <li>• Labor law poster*</li> <li>• Available as a \$99/month subscription</li> <li>• Online harassment prevention training</li> </ul> <p style="text-align: center; color: white;"><b>\$1,195</b></p>
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Give us a call at **800.399.5331** for more details. 55

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## Thank you!

Please fill out your evaluations.



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For more information:  
[CEAinfo@employers.org](mailto:CEAinfo@employers.org)  
**800.399.5331**



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## We'd love your feedback!



Scan the QR code to take a short survey about today's presentation.



Thank you for participating!



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