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## 2023 Mid-Year Labor Law Update



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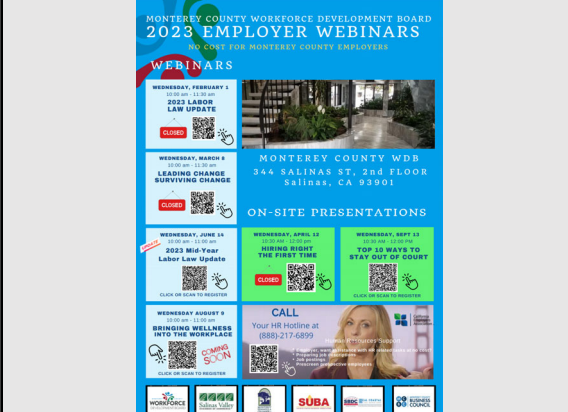
**WEBINARS**

- WEDNESDAY, FEBRUARY 1 | 10:00 AM - 11:30 AM | 2023 LABOR LAW UPDATE | CLOSED
- WEDNESDAY, MARCH 8 | 10:00 AM - 11:30 AM | LEADING CHANGE SURVIVING CHANGE | CLOSED
- WEDNESDAY, JUNE 14 | 10:00 AM - 11:30 AM | 2023 Mid-Year Labor Law Update | CLOSED
- WEDNESDAY, AUGUST 9 | 10:00 AM - 11:30 AM | BEING WELLNESS INTO THE WORKPLACE | CLOSED

**ON-SITE PRESENTATIONS**

- MONTEREY COUNTY WDB | 344 SALINAS ST., 2ND FLOOR | SALINAS, CA 93901
- WEDNESDAY, APRIL 26 | 10:00 AM - 11:30 AM | HIRING BUDDY: THE FIRST TIME | CLOSED
- WEDNESDAY, SEPTE 27 | 10:00 AM - 11:30 AM | TOP 20 WAYS TO STAY OUT OF DOUBT | CLOSED

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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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## Stuff Our Lawyers Make Us Say

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### We will be covering:

- Pay Transparency
- Cannabis Rights
- California Family Rights Act Expansion
- Agency and Local Ordinance Updates
- Case Law
- Looking Ahead



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## SB 1162: Pay Transparency Overview

**All Employers:**

- Must provide the **pay scale** to any **current employee** for their current position (or any applicant for the position they applied for) **upon request**.
- 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.



CA Equal Pay Act FAQs - [bit.ly/3X798n2](https://bit.ly/3X798n2)

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## Pay Scales/Ranges

How is “pay scale” defined and what earnings does it include?



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## Answer

The **salary** or **hourly wage range** the employer **reasonably expects** to pay for the position.

- **Need not include:** Bonuses, tips, or other benefits beyond base rate.
- **Should include:** at least the **lowest and highest paid** person in a **position** at your company; but you may expand the pay scale beyond those data points.



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## Example

For *each position*, include at least the **lowest pay** and **highest pay** currently at your organization.

**Example:**  
You are figuring out the pay scale for your HR Manager Role (Exempt).


**Current HR Manager Wages:**

- Eric Hastings: \$64,480/year
- Hannah Barrera: \$72,500/year
- Elizabeth Rodriguez: \$78,000/year.

**Pro Tip:** CEA Members – refer to our **Pay Scales Toolkit** to help you through the process!

**Your pay scale should be at least \$64,480 to \$78,000.**

Then consider whether you should **expand the pay scale**, depending on what you would be willing to pay based on skills, prior experience, etc.



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## 15 or More Employees: Job Postings

**What does 15 or more employees mean?**

- 15 or more employees *located anywhere*, so long as you have **at least one** employee currently **located in CA**.
- Count everyone on your payroll – full and part-time, regular and temporary, exempt and non-exempt, etc.

**Requirement:**

- Must include the pay scale in any **job posting**, including when using third-party recruiters.
- Pay scale has to be listed **in the posting itself** – cannot link to it or use a QR code.
- Applies to any position that could be **filled in CA** – whether physically or remotely.

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## Job Posting Compliance

You must include the **entire pay scale** for the **position**, not just a "hiring range."

- However, you may include the "hiring/starting range" as additional information/clarification.

**Consequences of Non-Compliance**

- Penalties for non-compliance are up to **\$10,000 per violation** (assessed by the Labor Commissioner).
- However, there is an **opportunity to cure**, if employer can show all job postings have been updated after initial violation.

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## Six Steps to Create Compliant Pay Scales

- 01** List All Job Positions
- 02** Ensure Job Descriptions are Accurate
- 03** Review Payroll Records
- 04** Create Pay Scales
- 05** Review Your Pay Scales
- 06** Audit and Update Pay Scales

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## Tips to Stay Compliant

- ☑ Those of another sex, race, ethnicity guaranteed **equal pay** for **substantially similar** work.
- ☑ Do **not** seek **salary history** information in hiring.
- ☑ 2023 - employers of all sizes must **retain** job title/wage history **records** and be prepared to **respond** to pay scale requests from current employees and applicants. (**15 or more**: include pay scales in job postings.)
- ☑ **Let CEA support you with our Pay Scales Tool Kit. Our HR Advisors are available to guide you through the process!**


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## Cannabis in the Workplace




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## Cannabis Legalization History

- In 2016, California voters passed **Prop 64**, which legalized non-medical, **recreational** cannabis.
- **CA Law**: Adults (21 & older) allowed to smoke or ingest cannabis in a private home, to possess small amounts of nonmedical cannabis, and to grow small amounts at home for personal use.
- **Federal Law**: Cannabis remains illegal, including for medical purposes.
- Prop 64: **NO** impact on CA workplaces




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## New Protected Class Cannabis Users AB 2188 – Jan. 1, 2024

- Starting **Jan. 1, 2024**: new protected class under the FEHA for those who use cannabis *off-duty*.
- Employers cannot **discriminate** or take **adverse action** against an employee/applicant for using cannabis while **off the job** and **away** from the **workplace**.
- Still does **not permit** an employee to **possess** or be **impaired** by cannabis while on the job.



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## AB 2188 Exceptions

AB 2188 does NOT apply to:

- **Building and Construction Trades**
- **Positions** requiring a **federal background** investigation or clearance.
- Does not interfere with **state/federal laws** requiring controlled substance testing (e.g., DOT transportation workers).



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## Cannabis Testing in 2024

Are employers still permitted to test employees/applicants for cannabis in 2024?



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## Answer

- *Yes and no.*
- Employers **may test** for **THC**, which is the chemical compound in cannabis that can indicate impairment and cause psychoactive effects. THC tests can detect use within the *last few hours*.
- Employers **CANNOT** test for **non-psychoactive cannabis metabolites**, which are stored in the body after THC is metabolized. These metabolites do not necessarily indicate impairment, but indicate use in the *last few weeks* (according to CA legislature).



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## Key Takeaways

- Remember, outside of pre-employment screening, **reasonable suspicion** is typically required to drug test employees.
- Enforce your policies **consistently** and without prejudice.
- Maintain employee **confidentiality**.




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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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## 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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## Key Take-Aways



- ✓ **Policy updates:** PSL & CFRA policy should include Designated Person. Update (or add) Bereavement leave policy
- ✓ **Form Updates:** PSL & CFRA request forms – add Designated Person
- ✓ **Make sure posters are updated**

**Pro Tip:** Handbook services & [bit.ly/All-in-One\\_Labor\\_Poster](http://bit.ly/All-in-One_Labor_Poster) available through CEA!



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## Agency & Local Ordinance Updates



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## Cal-OSHA's Permanent COVID Standard

- **Effective Period:** February 3, 2023 through February 3, 2025 (with certain record-keeping requirements lasting until February 3, 2026).



- **Status Quo:** Carries over many of the ETS' requirements (subject to some changes), such as **COVID Prevention Program, testing requirements, additional precautions during outbreaks, etc.**
- **Significant Changes:** **Daily screening** and **exclusion pay no longer required!**

Employer Fact Sheet URL - [bit.ly/DIR\\_COVID\\_Reqs](https://bit.ly/DIR_COVID_Reqs)



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## CDPH (More COVID Updates)

**Isolation/Quarantine Guidelines:**  
 COVID-19-positive person may end isolation **after 5 days** if:


- (1) they feel well or have improving symptoms, and
- (2) are fever-free for 24 hours.

No negative test required

**Healthcare & High Risk Settings:**

- CDPH **ended vaccination requirements** for healthcare workers, and those in direct care, adult care, correctional/ detention facilities, etc.
- **Masks no longer required** in these settings.

**Exceptions:** Masking still required after close contact exposures, during outbreaks, or as required by local ordinances.



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## Cal-OSHA Considering Indoor Heat Illness Standard

- Currently, **all outdoor places of employment** required to have a **written Heat Illness Prevention Program (HIPP)**.
- Can include **open spaces and partial structures**, such as an open warehouse or construction area.



- Cal/OSHA has been working on a **proposed indoor** heat illness prevention standard since 2017.
- Recently published proposed draft regulations.
- Would apply to: all indoor work areas where the temperature equals or exceeds 82 degrees.
- Requirements would kick in at 87 degrees – **cool down areas, water, breaks, etc.**

**Stay tuned!**



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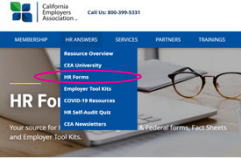
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## 40+ Local Minimum Wage Laws & Counting...

- About **40** 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).



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## Notable Increases

Location	Minimum Hourly Wage	Effective date
<b>California State Law</b>	<b>\$15.50</b>	<b>January 1, 2023</b>
San Mateo County	\$16.50	April 1, 2023
Alameda	\$16.52	July 1, 2023
Berkeley	\$18.07	July 1, 2023
Fremont	\$16.80	July 1, 2023
Los Angeles (city)	\$16.78	July 1, 2023
Los Angeles (county - unincorporated areas only)	\$16.90	July 1, 2023
San Francisco	\$18.07	July 1, 2023

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

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## Local Fair Workweek Ordinances

- More cities throughout California starting to adopt **Fair Workweek Ordinances**.
- E.g., *Los Angeles, Berkeley, San Francisco, Emeryville*
- Aimed at **larger businesses**.
- Generally require **advanced written notice of an employee's work schedule/changes** to schedule, minimum rest time between shifts, "predictability pay" for changes without proper notice, recordkeeping/notification requirements, etc.
- Check if applicable to your business if you have employees in these localities.

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## Remote I-9 Flexibilities Expiring

- DHS and ICE I-9 flexibilities first announced in March 2020, and updated in March 2021, set to expire **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.
- Employers will have **30 days from July 31, 2023 (until August 30, 2023)** to physically examine documents and update I-9 forms.
- Employers must verify documents themselves or use an Authorized or Third Party Representative.

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## New I-9 Form & Gender Identity

- New I-9 form will be released this year after announcement on October 11, 2022.
- On **March 31, 2023** USCIS announced an update to policy guidance accepting individual's self-identified gender marker.
- With some exceptions, requestors may self select their gender marker without the need for supporting documentation an/or even if it does not match gender listed on identity documents.
- Requestors can change gender marker after their initial filing.

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## Looking Ahead

- State of the Economy & Layoffs
- The Future of Remote Work
- AI/Chat GPT in HR
- Bills & Regulations to Watch
- Workplace Wellbeing

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## State of the Economy

- Layoffs / change in workforce dynamics
  - Amazon, Alphabet, Microsoft, Zoom, Meta & Salesforce among those reporting job cuts
- Unemployment
  - Numbers rose in the Spring, but still almost flat with 2022
- Population Shrink
  - Trend was evident during the pandemic. Will it continue?

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## The Future of Remote Work

Among workers with jobs that can be done remotely:

- About 35% of workers work 100% remotely
- About 41% of workers are working a hybrid schedule.

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## Chat GPT

- Potential to **change** the way we interact with technology by **generating human-like** responses to conversational text
- Potential for **disruption** in the HR industry
  - Recruiting and onboarding
  - Performance Management
  - Create Policies
  - Employee Engagement



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### Considerations

- ✔ What are the advantages and limitations in your business?
- ✔ Who should be allowed to use ChatGPT?
- ✔ Do you have a policy around the use of AI and/or ChatGPT?
- ✔ Trust and Verify? Or just a rough draft? Starter dough...

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### Bills to Watch

- **SB 616:** Sick Leave Expansion from 3 days to 7 days
- **AB 524:** Family Caregiver as FEHA Protected Classification
- **SB 525:** Healthcare Minimum Wage \$25/Hour

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### Workplace Violence

- Currently, only the Healthcare industry has specific regulatory requirements
- CalOSHA released a discussion draft of a proposed regulation for workplace violence prevention in general industry in May 2022
- Latest draft will be discussed in 2023 to draft regulations for general industry

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### Bringing Humanity into the Workplace



- **Recognition programs**
- **Personal & Professional Development**
- **Celebrating milestones**
- Showing **empathy**
- Having a sense of **humor**

*Happy people are productive employees*

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### How to Make Work Human



- 1 Thank**  
When our gratitude is turned into action
- 2 Talk**  
How we share our sense of meaning between org. and individuals
- 3 Celebrate**  
How we share our humanity and our common purpose

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### Benefits of Making Work Human



- **Better** retention and recruitment
- **Efficiency**
- Better employee engagement & **performance**
- Greater **innovation** and creativity
- **Improved** customer service
- Increased **profits**
- **Safety**

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## Final Reminders

- ✓ Maintain **pay scales** and **job titles & wage rates**
- ✓ Review your **Drug & Alcohol** policy
- ✓ Make sure your **CFRA** policy & forms are updated
- ✓ Review your **Bereavement** policy to make sure it is compliant
- ✓ Be aware of **Local Minimum** wage mid year increases (including remote workers!)
- ✓ **COVID I-9 Remote Flexibilities** are expiring


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## CEA Membership Plans

<p style="text-align: center; font-weight: bold; font-size: 1.2em;">ULTIMATE</p> <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; font-weight: bold; color: white;">\$5,995</p>	<p style="text-align: center; font-weight: bold; font-size: 1.2em;">PREMIER</p> <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; font-weight: bold; color: white;">\$2,495</p>	<p style="text-align: center; font-weight: bold; font-size: 1.2em;">ASSOCIATE</p> <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; font-weight: bold; color: white;">\$1,195</p>
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Give us a call at **800.399.5331** for more details.


 California Employers Association

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## Thank you!

Please fill out your evaluations.




**HRCI:**  
The use of this seal confirms that this activity has met HR Certification Institute's (HRCI) criteria for recertification.



**SHRM:**  
CEA is recognized by SHRM to offer Professional Development Credits (PDCs) for the SHRM-CPSM or SHRM-SCP. For more information about certification or recertification, please visit [shrmcertification.org](http://shrmcertification.org).

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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*Supporting Employers Since 1940*

# Thank You

For more information email  
[CEAInfo@employers.org](mailto:CEAInfo@employers.org)  
or call 800.399.5331



**WORRY-FREE IN '23**

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