Now & Next
Labor & Employment Alert

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Get ready for 2027: New California employment laws

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California employers should prepare now for new laws on AI, surveillance, training, arbitration, Cal/WARN, wage reporting, and leave—most of which go into effect January 1, 2027.

What's the impact?

- Employers using AI, automated decision systems, or workplace surveillance tools may need to update policies, notices, and decision-making procedures.
- Employers should be aware of expanded Cal/OSHA investigation, evidence-preservation, notification, and criminal-enforcement provisions.
- Covered employers should add anti-hate-speech content to harassment-prevention training by January 1, 2028, and EMSA-approved naloxone training if CPR certification is required.

New California laws governing employer use of AI, workplace surveillance, automated decision systems, training, arbitration, wage reporting, California Worker Adjustment and Retraining Notification (Cal/WARN) Act notices, wage-and-hour enforcement, and protected leave will

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require employers to revise their policies, vendor practices, notices, and training materials. Unless noted otherwise, all laws take effect on January 1, 2027. California employers should begin preparing now for a busy 2027 compliance cycle.

Minimum wage increase

California's statewide minimum wage will increase to $17.40 per hour. This increase will also raise the minimum annual salary for California's white-collar overtime exemptions to $72,384. For further information about this wage increase and California local minimum wage increases, see our recent minimum wage update.

Workplace surveillance (AB 1331)

Assembly Bill (AB) 1331 limits employers' use of workplace surveillance tools, particularly by prohibiting employers from using such tools to monitor or surveil employees in workplace bathrooms, subject to narrow exceptions. Prohibited surveillance tools include geolocation tracking software on phones or handheld devices, time-tracking software, security cameras, and electronic keycard or security badge systems. Employees will have the right to leave behind workplace surveillance tools on their person or in their possession when entering a bathroom, unless they must remain available during meal or rest periods under federal law or existing state law. An employer is not in violation if an employee voluntarily brings the tool into a workplace bathroom, or if the employee brings a badge, personal alarm system, or other covered tool into a bathroom because the employer requires it for identification or safety purposes or because it is required to access a locked or secured bathroom, provided the tool does not detect or record audio or video and does not have physically embedded or attached AI. Employers who violate this law may face a civil penalty of up to $500 per violation.

Employment contracts' "stay-or-pay" provisions: Contract date (AB 1697)

AB 1697 delays the operative date for California's "stay-or-pay" restrictions under Business & Professions Code §16608 and Labor Code §926, so that, subject to exceptions, the restrictions only apply to contracts entered into on or after January 1, 2027. Subject to those exceptions, the law prohibits contract terms that: (a) require an employee to pay an employer for certain debts if their employment terminates, (b) authorize collection activity or the end of forbearance on such debts upon termination, or (c) impose a penalty, fee, or cost on an employee because their employment terminates. A contract term that violates the statute in a contract entered into on or after January 1, 2027, is void as against public policy. An employee may seek actual damages or

$5,000 per employee, whichever is greater, plus injunctive relief and reasonable attorneys' fees and costs. The law contains limited exceptions, including:

- Certain governmental loan repayment or forgiveness programs
- Government-funded recruitment or retention programs
- Qualifying tuition-repayment contracts for transferable credentials
- Approved apprenticeship programs
- Certain discretionary or unearned payments that meet statutory safeguards
- Certain residential-property contracts
- Certain affiliation-payment contracts involving securities broker-dealers, insurance producers, or investment advisers and their registered or licensed agents or representatives
- Limited repayment obligations for advanced paid time off upon voluntary separation

Sexual harassment training: Anti-hate speech (AB 1803)

Beginning January 1, 2028, employers covered by Government Code section 12950.1 must include anti-hate-speech training as a component of required sexual harassment prevention training. The training must provide supervisors and employees with practical guidance on recognizing, reporting, and confronting workplace speech that vilifies, humiliates, or incites hatred against people based on protected characteristics listed in Government Code section 12940(a). Training that already covers unlawful harassment and abusive conduct, based on those protected characteristics, satisfies the new requirement.

Workplace surveillance tools (AB 1883)

AB 1883 prohibits an employer from using a workplace surveillance tool that collects neural data or uses AI to recognize an individual's emotional state, or to make inferences or predictions about it. An employer that violates AB 1883 may be subject to a penalty of up to $500 for each violation, and an employee, the labor commissioner, or a public prosecutor may recover a statutory *or* civil penalty (but not both) for the same violation. The statute does not prohibit a workplace surveillance tool used to ensure safety, and it also does not apply to tools that do not perform the prohibited AI functions.

Personnel emergency training requirements: Opioid overdose reversal (AB 2150)

AB 2150 requires California employers that require employee CPR certification training to also require those employees to take a California Emergency Medical Services Authority (EMSA)-approved online video module on the use of naloxone to increase opioid overdose reversals.

Each covered employer must pay for the required training. At a minimum, the training must cover recognition of opioid-overdose signs and symptoms, appropriate response actions and emergency procedures, and proper administration of naloxone or other FDA-approved opioid antagonists. The statute clarifies that the training is for educational and preparedness purposes only and does not create an independent duty, authorization, or expectation for any employee to administer naloxone.

Validity of agreements to arbitrate (AB 2155)

AB 2155 amends California Code of Civil Procedure §1281 to provide that a written arbitration agreement is not enforceable under that section to the extent the agreement is not enforceable under the Federal Arbitration Act (FAA), 9 USC §1 *et seq*. The law makes arbitration agreements unenforceable if they would be unenforceable under the FAA, including, but not limited to, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act.

Workplace violence: Restraining orders (AB 2179)

Existing law authorizes an employer or union to seek a temporary restraining order and order after hearing on behalf of an employee who has suffered harassment, unlawful violence, or a credible threat of violence that can reasonably be construed to have been carried out at the workplace. Beginning January 1, 2028, AB 2179 allows any party or witness to a petition for an order under Code of Civil Procedure section 527.8 to *appear remotely* at the hearing, prohibits a fee for remote appearance, and requires each California Superior Court to develop and post local rules and instructions for those remote appearances. Beginning January 1, 2028, courts must allow electronic filing of documents related to these protective-order petitions, as specified.

Occupational safety and health investigations (AB 2321)

AB 2321 makes it a misdemeanor for any person to willfully resist, prevent, impede, or interfere with the chief or authorized representative of California's Occupational Safety and Health Administration (Cal/OSHA) in performing specified investigation or inspection duties or to willfully violate a court order relating to those duties.

The law requires the Bureau of Investigations to promptly investigate specified cases, including violations involving death, serious injury or illness, serious exposure to five or more employees, requests for prosecution by a division representative, and accidents involving serious injury, illness, or serious exposure for which the division issues a willful-violation citation. The law also requires immediate notice to appropriate prosecuting authorities in specified serious accident cases and requires the Bureau of Investigations and the division to cooperate with prosecutors on accepted investigations. Finally, the law expands public-offense exposure for willful occupational safety or health violations that cause death, permanent or prolonged bodily

impairment, serious injury or illness, or serious exposure. This public-offense provision applies to any employer and any employee who directs, manages, controls, or has custody of any employment, place of employment, or other employee.

Expanding the scope of sex discrimination (AB 2563)

AB 2563 requires provisions of California law that prohibit discrimination based on sex, gender, or similar categories to be interpreted as prohibiting "sex discrimination," including discrimination based on specified actual or perceived characteristics or actions, such as degree of conformity to sex or gender stereotypes. For employment purposes, the law further confirms protections relating to assigned sex or gender category, including female, male, or nonbinary status; conformity to sex or gender stereotypes; gender identity and gender expression; pregnancy and related medical conditions; reproductive-health-related decisions; sexual orientation; and variations in sex characteristics. Employers should review policies, training, and complaint-handling practices to ensure they address sex discrimination concepts with sufficient breadth.

Minimum wage for agricultural workers (AB 2646)

AB 2646 establishes a $19.75 minimum hourly wage for approved agricultural employees and corresponding employees. Beginning January 1, 2027, and each January 1 thereafter, that wage must be adjusted by an amount equal to the Social Security cost-of-living adjustment for that year, based on changes in the United States Consumer Price Index, and applied to the previous year's amount in the same manner as Social Security adjustments are applied. For purposes of the statute, a corresponding employee is a California-resident agricultural employee who works for the same employer, during the same time period, and performs the same or substantially similar work as an approved agricultural employee.

Automated decision systems (SB 947)

Beginning July 1, 2027, SB 947 restricts employers' use of automated decision systems (ADS), defined as computational processes derived from machine learning, statistical modeling, data analytics, or AI that issue simplified outputs used to assist or replace human discretionary decision-making and materially impact natural persons. Specifically, an employer may not use an ADS to prevent compliance with or violate labor, occupational health and safety, employment, or civil rights laws; infer an employee's protected status under the Fair Employment and Housing Act (FEHA), California Government Code section 12940; or predict and take adverse action against an employee for exercising legal rights. An employer may not rely *solely* on an ADS when making a disciplinary or termination decision. But if the employer *primarily* relies on ADS output for such a decision, a human must corroborate the decision using the data used to produce the ADS output or other relevant supporting information. When an employer primarily uses an ADS to make a disciplinary or termination decision, the employee may request, and the employer

must provide a meaningful, objective description of the employee's own data used by the ADS, with other individuals' personal information anonymized. If the employer primarily relies on ADS output to make a disciplinary or termination decision, the employer must provide the affected employee with a written post-use notice at the time the employer informs the employee of the decision. The law also prohibits retaliation and authorizes a civil penalty of $500 per violation.

Notices of technological displacement (SB 951)

SB 951 amends the Cal/WARN Act to require additional notice content when a covered mass layoff, relocation, or termination is caused, in whole or in substantial part, by an AI system or other automated technology replacing or automating employment positions. The notice must identify the number, classification or occupation, and work location of layoffs substantially due to replacement or automation by AI or other automated technology; the job functions to be automated; the category or type of AI system or other automating technology involved; and the statement, "This notice is for a technology displacement" at the top of the notice.

The California Employment Development Department (EDD) must publish summaries of covered notices received under this provision and post a quarterly statewide summary of reported technology displacements. The law also requires the EDD to submit a legislative report on AI's effects on business hiring practices, including impacts by industry and occupation at the state and regional levels, on or before January 1, 2028.

Bereavement leave (SB 1149)

Current law requires covered employers to grant, upon request, up to five days of bereavement leave upon the death of an employee's family member (as defined) and prohibits retaliation or interference with an employee's exercise of bereavement leave rights. SB 1149 expands the definition of "family member" to include a "designated person," meaning an individual related to the employee by blood or whose association with the employee is the equivalent of a family relationship. An employer may limit an employee to one designated person per 12-month period for bereavement leave purposes.

Pay data reports to the Civil Rights Department (SB 1237)

Current law requires private employers with 100 or more employees to submit an annual pay data report to the California Civil Rights Department (CRD) by the second Wednesday of May. Private employers with 100 or more employees hired through labor contractors must submit a separate report for those employees. SB 1237 increases the penalty for a subsequent failure to file a required report to up to $1,000 per employee; the first failure penalty remains up to $100 per employee. The law also requires the CRD to annually publish the total number of pay data

reports submitted in aggregate form, calculated to prevent associating data with any individual business or person.

Labor commissioner investigations and evidence preservation (SB 1316)

SB 1316 strengthens the California Labor Commissioner's ability to investigate and collect on wage-and-hour violations. If an employer or other liable person or entity fails to produce requested payroll, time, or employment records in response to a duly served labor commissioner written request within the required time, they may be precluded from introducing, using, or relying on those records as evidence in specified administrative or writ proceedings.

For most covered requests, the labor commissioner must allow at least 15 days to respond, subject to exceptions, and a timely, good-faith response requesting more time triggers an automatic 15-day extension. The evidentiary bar does not apply to an inadvertent clerical error if the error is corrected, and the records are produced no later than 20 days from the original requested production date. If a labor commissioner order becomes final and remains unpaid, the labor commissioner may record a real-property lien for amounts due under the final order, and SB 1316 allows the lien to be renewed before expiration for additional 10-year periods.

Independent contractor misclassification (SB 1444)

SB 1444 increases potential exposure for willful independent contractor misclassification by allowing each employee, the labor commissioner, or a public prosecutor to recover existing civil penalties as damages payable to the employee in specified proceedings. Existing law imposes civil penalties of $5,000 to $15,000 per violation for willful misclassification, and $10,000 to $25,000 per violation for a pattern or practice of such violations. SB 1444 provides that each employee, the labor commissioner, or a public prosecutor may alternatively recover those penalties as damages payable to the employee, but an employee may not recover both those damages and a Private Attorneys General Act (PAGA) civil penalty for the same violation.

Practical steps for employers

Covered employers should start by taking inventory of any AI, ADS, and workplace surveillance tools used for hiring, discipline, termination, productivity monitoring, security, or other employment-related decisions. They should also review key compliance materials and practices, including vendor agreements, arbitration agreements, stay-or-pay provisions, wage practices, Cal/WARN notice templates, pay data reporting processes, training programs, leave policies, and record-retention procedures. Before the applicable effective dates, employers should update policies and notices, confirm human review procedures for automated decisions, prepare for

required training changes, and coordinate across payroll, HR, legal, safety, and compliance teams.

Nixon Peabody's Labor & Employment team can help employers assess these new requirements and update policies, agreements, notices, and compliance programs. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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