

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

October 2023

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California

Oct. 14, 2023, marked the constitutional 30-day deadline for Gov. Newsom to act on all bills passed by the California State Legislature. Following is an overview of the bills related to workers' compensation approved by Governor Newsom since the last issue.

Assembly Bill 336

On Oct. 7, 2023, Governor Newsom signed [Assembly Bill 336](#) related to workers' compensation insurance for contractors. This legislation requires that as part of the licensure renewal process, all active licensees who have on file a current and valid Certificate of Workers' Insurance or Certification of Self-Insurance or is required to provide those certificates to certify on their license renewal with the California Contractors State License Board (CSLB) the three classification codes for which the highest estimated payroll is reported on the policy. If the licensee has fewer than three classification codes reported on the policy, the licensee will be required to provide all the classification codes reported on the policy.

Although the CSLB is not required by this bill to verify or investigate the accuracy of the licensee's classification code or codes provided, this bill further requires the CSLB to make the classification code or codes certified by the licensee available on its internet website whenever it updates the public license detail.

The provisions of the bill become operative on July 1, 2024.

Assembly Bill 594

Governor Newsom approved [Assembly Bill 594](#) on Oct. 10, 2023. This bill, until Jan. 1, 2029, explicitly authorizes a public prosecutor to independently prosecute an action, either civil or criminal, for specified violations of the Labor Code occurring within their geographic jurisdiction. In addition to any other remedies available, a public prosecutor is authorized to seek injunctive relief to prevent continued violations. "Public prosecutor" as used in this bill is defined as the attorney general, a district attorney, a city attorney, a county counsel or any other city or county prosecutor.

This bill requires moneys recovered by a public prosecutor to be applied first to payments due to affected workers and requires all civil penalties recovered to be paid to the general fund of the state, unless otherwise specified. This legislation also provides that, in any action initiated by a public prosecutor or the Labor Commissioner to enforce the Labor Code, any individual agreement not including a collective bargaining agreement (CBA) between a worker and employer that purports to limit representative actions or to mandate private arbitration has no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the code.

Finally, Assembly Bill 594 provides additional powers to the Labor Commissioner or public prosecutor in enforcing willful misclassifications and permits recovery of certain penalties as damages payable directly to the misclassified employee.

Existing powers and duties to enforce the Labor Code and labor laws of the state by entities under the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency remain intact.

Assembly Bill 621

Gov. Newsom approved [Assembly Bill 621](#) on Oct. 8, 2023. This legislation allows the spouse and children of specified state safety members, peace officers, and firefighters for the Department of Forestry and Fire Protection (CAL FIRE) who are killed in the line of duty to receive both the workers' compensation death benefit and the Public Employees' Retirement System (PERS) special death benefit. This provision applies retroactively to Jan. 1, 2019, for injuries not previously claimed or resolved.

Currently, only the surviving spouse and children of local public safety officers (police and firefighters) and CHP officers can collect both the workers' compensation death benefit and the PERS special death benefit in the event the officer is killed in the line of duty. All other employees who are active members of PERS are limited to reasonable expenses of burial not exceeding \$1,000 under workers' compensation unless it is determined that death benefits will not be paid by PERS. If the total death allowance paid to the surviving spouse and children under PERS is less than the workers' compensation death benefit, the difference between the two death benefit amounts is payable.

In fiscal comments in the [Assembly Floor Analysis](#) of this bill, it is noted that its costs cannot be fully determined until the number of reopened cases has been identified, as the amount of the benefit increases with the claimant's number of dependents.

Assembly Bill 800

[Assembly Bill 800](#), approved by the governor on Sept. 30, 2023, requires all public high schools, including charter schools, to annually observe "Workplace Readiness Week" by providing information to juniors and seniors on their rights as workers, including worker safety and workers' compensation.

Senate Bill 623

On Oct. 8, 2023, Gov. Newsom signed [Senate Bill 623](#). This bill extends the sunset date for the disputable presumption that a diagnosis of post-traumatic stress disorder (PTSD) arose out of and in the course of employment for certain state and local firefighting personnel and peace officers to Jan. 1, 2029, from Jan. 1, 2025.

The legislation also requires the Commission on Health and Safety and Workers Compensation (CHSWC) to submit a report to the Senate Committee on Labor, Public Employment and Retirement and the Assembly Committee on Insurance analyzing claims filed for post-traumatic stress disorder injury for which compensation is claimed by public safety dispatchers, public safety telecommunicators, and emergency response communication employees, from Jan. 1, 2020, through Dec. 31, 2023, no later than Jan. 1, 2025.

The California legislature is scheduled to reconvene the second year of their 2023-2024 legislative session on Jan. 3, 2024. Bills introduced in 2023 must pass out of its house of origin by Jan. 31, 2024.

District of Columbia

Bill B25-0511

[Bill B25-0511](#), the Parity in Workers' Compensation Recovery Act of 2023, was signed by Mayor Miriam Bowser on Oct. 26, 2023, and enacted with Act Number A25-0274. On an emergency basis, this bill amends the District of Columbia Workers' Compensation Act of 1979 as follows:

- Payment or award of compensation under the workers' compensation law of any other state does not bar a claim for compensation under the district's workers' compensation law for the same injury or death.
- Any such award under the district's workers' compensation law must be reduced by the amount of compensation received or awarded under the workers' compensation law of any other state.

These provisions apply to all claims that are pending as of June 28, 2022, and all claims filed after June 28, 2022. This act expires on Jan. 24, 2024, unless extended.

Oregon

Industry Notice of changes Jan. 1, 2024, due to House Bill 4138

On Nov. 8, 2023, the Oregon Workers' Compensation Division (WCD) issued an [industry notice](#) that provides a brief summary of the major claim processing changes in [House Bill 4138](#) enacted in 2022 and rules adopted to implement the bill.

A full summary of the rule changes related to this legislation can be found [here](#). Click [here](#) to view the March 2022 report on this bill that amended workers' compensation statutes related to temporary disability, medically necessary status and overpayment recovery.

These changes apply to all claims that exist or arise on or after Jan. 1, 2024, regardless of the date of injury or the date on which the claim is filed.

Federal

National Labor Relations Board issues final rule on Joint Employer Status

On Oct. 26, 2023, the National Labor Relations Board (NLRB) issued [its final rule](#) addressing the Standard for Determining Joint Employer Status under the National Labor Relations Act.

Under the new standard, an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine one or more of the employees' essential terms and conditions of employment, which are defined exclusively as:

- Wages, benefits and other compensation.
- Hours of work and scheduling.
- The assignment of duties to be performed.
- The supervision of the performance of duties.
- Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline.
- The tenure of employment, including hiring and discharge.
- Working conditions related to the safety and health of employees.

It should be noted that the NLRB final joint employer rule is completely separate from the [Joint Employer Status under the Fair Labor Standards Act](#), consistent with their different governing statute.

The effective date of the new rule is Feb. 26, 2024, and the new standard will only be applied to cases filed after the effective date. The NLRB [extended the effective date of its final rule](#) on Nov. 16, 2023. Click [here](#) to view an updated fact sheet on the new rule prepared by the NLRB.

In adopting this new standard, the final rule rescinds the 2020 final rule that was promulgated by the prior Board. After the prior Board promulgated the 2020 standard, the Agency was sued in federal district court over that rule. That lawsuit has been held in abeyance while the Board considered a new rule. Legal challenges and possibly legislative changes are also anticipated regarding this new rule. Its impact, if any, on workers' compensation is currently uncertain.

The information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your company's attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to company policy.

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