LCW 2021

LEGISLATIVE

ROUNDUP

The Legislative Roundup is a compilation of bills, presented by subject, which were signed into law and have an impact on the employment and employment related issues of our clients. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), or as otherwise noted, bills are going into effect on January 1, 2022. Urgency legislation will be identified as such.

If you have any questions about your agency's obligations under the new or amended laws as outlined below, please contact our Los Angeles, San Francisco, Fresno, Sacramento or San Diego office and an attorney will be happy to answer your questions.

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DISCRIMINATION, HARASSMENT, & RETALIATION

SB 807 – Modifies DFEH's Procedures For Enforcing Civil Rights Laws, Extends Employer Retention Requirement For Specified Employment Records.

Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Department of Fair Employment and Housing (DFEH) to enforce civil rights laws with respect to housing and employment. The FEHA makes certain discriminatory employment and housing practices unlawful, and authorizes a claimant to file a verified complaint with DFEH. The FEHA requires DFEH to investigate administrative claims, and to attempt to resolve disputes through alternative dispute resolution (ADR). If ADR fails and DFEH finds the claim has merit, the FEHA authorizes the DFEH director to bring a civil action in the name of DFEH on behalf of the claimant within a specified amount of time.

SB 807 authorizes DFEH and a party under DFEH investigation to appeal adverse superior court decisions regarding the scope of DFEH's power to compel cooperation in the investigation within 15 days after the adverse decision. SB 807 further directs courts to give precedence to the appeal and to make a determination on the appeal as soon as practicable after the notice of appeal is filed. SB 807 authorizes courts to award attorney's fees and costs to the prevailing party in the action, except for a prevailing defendant, unless the court determines that DFEH's petition was frivolous when filed or that DFEH continued to litigate the matter after it clearly became frivolous.

SB 807 also extends the employer record retention requirement from two to four years when a complaint has been filed, and eliminates exemptions for a certain state agency.

SB 807 changes the deadlines by which some complaints for violations of civil rights laws must be filed with DFEH. Under current law, the FEHA prohibits filing a complaint with the DFEH alleging certain civil rights violations one year after the unlawful practice occurred. The FEHA prohibits filing a complaint alleging a sexual harassment claim that occurred as part of a professional relationship three years after the unlawful practice occurred.

SB 807 subjects the filing of a complaint with the DFEH alleging sexual harassment that occurred as part of a professional relationship to the one-year limitation.

SB 807 also tolls the statute of limitations, including retroactively but without reviving lapsed claims, for filing a civil action based on specified civil rights complaints under investigation by DFEH until:

1. DFEH files a civil action for the alleged violation; or
2. One year after DFEH issues written notice to a complainant that it has closed its investigation without electing to file a civil action for the alleged violation.

SB 807 also authorizes DFEH or counsel for a complainant to serve a verified complaint on the entity alleged to have committed the civil rights violation by any manner specified in the Code of Civil Procedure.

Moreover, SB 807 enables DFEH to bring an action to compel cooperation with its discovery demands in any county in which DFEH's investigation takes place, or in the county of the respondent's residence or principal office.

Further, SB 807 authorizes DFEH to bring a civil action to enforce the FEHA in any county where:

1. The unlawful practices are alleged to have been committed;
2. Records relevant to the alleged unlawful practices are maintained and administered;
3. The complainant would have worked or had access to public accommodation but for the alleged unlawful practice;
4. The defendant's residence or principal office is located; or
5. If the civil action includes class or group allegations on behalf of DFEH, in any county in the state.

SB 807 tolls the deadline for DFEH to file a civil action while a mandatory or voluntary dispute resolution is pending.

SB 807 clarifies that, for any employment discrimination complaint treated by DFEH as a class or group complaint, DFEH must issue a right-to-sue notice upon completion of its investigation, and not later than two years after the filing of the complaint.

SB 807 also removes a provision of the FEHA prohibiting a complainant from commencing a civil action with respect to an alleged discriminatory housing practice that forms the basis of a civil action brought by DFEH.

(SB 807 amends Sections 12930, 12946, 12960, 12961, 12962, 12963.5, 12965, 12981, and 12989.1 of the Government Code.)

ELECTED OFFICIALS

AB 428 – Sets Two-Term Minimum For County Board Of Supervisors Term Limits; Specifies That Supervisors Are Included Among County Officers For Whom Board Sets Compensation.

Sections 25000 and 25300 of the Government Code allow the board of supervisors of any county to adopt, or the residents of the county to propose an initiative to limit or repeal, a limit on the number of terms a board member may serve on the board of supervisors, and requires the board of supervisors to prescribe the compensation for all county officers, respectively. AB 428 precludes a county from imposing a term limit of fewer than two terms on its board of supervisors. However, the law specifies that it does not affect any term limits that were legally in effect prior to January 1, 2022, in any county.

Additionally, AB 428 amends Section 25300 to include the board of supervisors in the definition of county officers for whom the board of supervisors is required to prescribe compensation.

(AB 428 amends Sections 25000 and 25300 of the Government Code.)

EMPLOYEE & WORKPLACE SAFETY

AB 645 – Modifies Employer Obligations For Reporting Workplace COVID-19 Exposures And Outbreaks.

This bill modifies existing reporting requirements for employers regarding instances of COVID-19 exposures and outbreaks in the workplace. The bill, which was enacted on October 5, 2021, was designated an urgency statute and took effect immediately, and will remain in effect until January 1, 2023.

Employers have an existing obligation to report COVID-19 exposures at a "worksite" to all employees at that site and to each employee organization, if any, that represent such employees, as well as to report outbreaks at the "worksite" to the local health department.

AB 654 significantly narrows the definition of "worksite" for reporting purposes.

Under prior law, "worksite" was broadly defined to include "the building, store, facility, agricultural field, or other location where a worker worked during the infectious period." This definition did not account for large worksites where many employees could work simultaneously without having direct or indirect exposure to one another.

The new definition for "worksite" excludes (1) buildings, floors, or other locations of the employer that a qualified individual did not enter; (2) locations where the worker worked by themselves without exposure to other employees; and (3) a worker's personal residence or alternative work location chosen by the worker when working remotely. The first exclusion is particularly important to employers because now employers only must report COVID-19 exposures in areas where employees actually work and where there is potential for exposure.

As a result of this amendment, employers may send fewer, but more targeted, notices to employees in the event of a workplace exposure. Specifically, an employer will need to determine which employees were in the specific "worksite," and send those employees notices as opposed to sending the notices to all employees in the building. Employers will also have to send fewer "outbreak" notices to the local health department because there is a reduced

likelihood that there will be three COVID-19 cases in the same "worksite" under the revised and more limited definition.

AB 654 also expands the category of employers that are exempt from the statutory reporting requirements. Under prior law, the reporting requirement applied to both private and public employers, except for a "health facility" as that term is defined in the Health and Safety Code. As defined, that exception was limited to hospitals, nursing facilities, and similar residential or in-patient facilities. AB 654 expands the exemption to include 16 other types of health care facilities, such as community clinics, adult day health centers, community care facilities, and child day care facilities.

For employers that provide health care services in facilities other than "health facilities," the expanded exemptions eliminate reporting obligations, and will reduce the significant administrative burden associated with reporting exposures to employees and outbreaks to the local health department.

(AB 654 amends Sections 6325 and 6409.6 of the Labor Code.)

SB 606 – Expands Cal/OSHA's Power To Enforce And Penalize Enterprise-Wide Or Egregious Violations.

Under existing law, the California Division of Occupational Safety and Health (Cal/OSHA) has a statutory duty to (1) promulgate workplace safety standards that employers in California must adhere to; and (2) respond to worker complaints and investigate worksites where there is evidence of safety standard violations, and, if necessary, penalize employers who fail to meet standards. SB 606 was enacted to mirror federal OSHA regulations that allow for heightened penalties for "egregious" safety violations at the state level.

SB 606 creates a rebuttable presumption that a Cal/OSHA violation committed by an employer that has multiple worksites is enterprise-wide if the employer has a written policy or procedure that violates Cal-OSHA rules and regulations, in most circumstances, or Cal/OSHA has evidence of a pattern or practice of the same violation committed by that employer involving multiple worksites. The bill also authorizes Cal/OSHA to issue an enterprise-wide citation requiring enterprise-wide abatement if the employer fails to rebut this presumption, and increases the penalties for enterprise-wide violations to the same level as willful or repeated violations.

SB 606 also defines certain categories of "egregious" violations where Cal/OSHA will be required to issue a citation, rather than just a non-compliance notice. A violation is defined as egregious if any of the following are true:

1. The employer intentionally, through conscious and voluntary action or inaction, made no reasonable effort to eliminate a known violation.

2. The violations resulted in worker fatalities, a worksite "catastrophe" resulting in hospitalization of three or more employees, or a large number of illnesses or injuries.

3. The violations resulted in persistently high rates of worker injuries or illnesses.

4. The employer has an extensive history of prior violations of this part.

5. The employer has intentionally disregarded their health and safety responsibilities.

6. The employer's conduct as a whole shows bad faith in their duties to maintain a safe workplace.

7. The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that may be in place.

SB 606 requires Cal/OSHA to treat each instance of an employee being exposed to an egregious violation to be considered a separate violation, allowing Cal/OSHA to stack cumulative penalties for widespread or ongoing safety violations.

SB 606 also expands Cal/OSHA's investigatory powers, authorizing Cal/OSHA to issue an investigative subpoena if an employer fails to promptly provide requested information, and to enforce the subpoena if the employer fails to comply within a reasonable period of time.

(SB 606 amends Sections 6317, 6323, 6324, 6429, and 6602 of, and adds Sections 6317.8 and 6317.9 to, the Labor Code.)

FAMILY & MEDICAL CARE LEAVE

AB 1033 – Expands CFRA To Protect Leave Taken To Care For A Parent-In-Law; Changes Mediation Requirements For Suits Against Certain Small Employers.

AB 1033 makes various changes to the Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act (CFRA), which is a part of the Fair Employment and Housing Act (FEHA). Broadly, CFRA gives eligible employees a right to take up to 12 work weeks of unpaid protected leave during any 12-month period for family care and medical leave, including leave to care for a parent, spouse, and other listed family members.

1. Leave to Care for Parent-in-Law
In 2020, SB 1383 expanded the list of family members that an employee can take leave to care for. That bill added the term "parent-in-law" to the definition section of the CFRA, but omitted parents-in-law from the actual substantive list of covered family members. That omission left employers uncertain about whether they are required to provide employees time off under CFRA to provide care for a parent-in-law. AB 1033 now clarifies that employees can take protected leave to care for a parent-in-law.

2. Changes to Small Employer Family Leave Mediation Program
AB 1033 amends certain provisions regarding the small employer family leave mediation pilot program established in 2020's AB 1867, which requires mediation through the California Department of Fair Employment and Housing ("DFEH") before an employee can sue certain small employers with between 5 and 19 employees for alleged violations of the CFRA.

The current process allows a covered small employer or the employee to request mediation after the DFEH issues a right to sue letter. If an employer or employee requests mediation, the employee is prohibited from pursuing a civil action until the mediation is complete. In exchange, the employee's statute of limitations on claims is tolled until the mediation is complete.

AB 1033 revises several procedural aspects of the pilot program, including the following:

1. When an employee requests an immediate right to sue letter for a CFRA claim, DFEH must notify the employee in writing that if either party requests mediation, mediation must be completed prior to filing suit.

2. The employee must contact DFEH's dispute resolution division prior to filing a lawsuit and to indicate whether they are requesting mediation.

3. If DFEH receives a request to mediate from either party within 30 days, it shall initiate the mediation within 60 days of DFEH's receipt of the request or the receipt of the notification by all named respondents, whichever is later.

4. Once mediation has been initiated, the mediator must to notify the employee no later than 7 days before mediation of certain statutory rights to request certain employment-related information, and must help facilitate other reasonable requests for information.

In addition, if a covered small employer does not receive the required mediation notification due to the employee's failure to contact DFEH prior to filing suit, AB 1033 provides that the employer is entitled, on request, to a stay of any pending civil action or arbitration until the mediation is complete or deemed unsuccessful.

AB 1033 does not amend the existing sunset date for the mediation pilot program, which will expire automatically on January 1, 2024.

(AB 1033 amends Section 12945.2 and 12945.21 of the Government Code.)

LABOR RELATIONS

AB 135 – Revives Statutory Impasse Resolution Procedures For IHSS Labor Negotiations; Imposes Funding Penalty For Agencies That Fail To Reach Agreement.

AB 135 is a budget omnibus bill, and therefore makes a large number of changes to various laws relating to the state budget for fiscal year 2021-2022. One enactment that is particularly relevant to California

counties is the revival of a previously-repealed penalty provision for agencies that fail to reach a collective bargaining agreement with an employee organization representing In-Home Supporting Services (IHSS) providers.

In 2017, Senate Bill 90 created a temporary impasse resolution procedure for labor negotiations with IHSS providers, consisting of mandatory mediation and factfinding. This bill included a fixed sunset date of January 1, 2020. In June 2019, Senate Bill 80 added a penalty provision, whereby an IHSS public authority or nonprofit consortium would have its Realignment funding reduced by 1% of the county's maintenance of effort requirement, if it failed to reach agreement on a contract with IHSS providers within a certain timeframe after receiving a factfinding report that was more favorable to the providers than the agency's last, best, and final offer. SB 80 extended the sunset date to January 1, 2021; on that date, this procedure and the penalty provision were automatically repealed.

Effective July 16, 2021, AB 135 revived both the impasse resolution framework as well as the penalty provision, with two significant changes from the previous version. First, the funding penalty is increased to 7% of the County's maintenance of effort requirement. Second, the law no longer includes an automatic sunset date. As such, agencies engaged in IHSS negotiations should be mindful of the risk of having this increased penalty imposed during each subsequent MOU negotiation.

(AB 135 adds Section 12031.61 to the Welfare and Institutions Code, among numerous other changes.)

AB 237 – Requires Public Employers To Maintain Health Benefits For Striking Employees.

This bill, also known as the Public Employee Health Protection Act, was enacted to ensure that protected concerted activity by public employees in the form of an authorized strike, does not result in loss of health insurance coverage. The bill applies to any public employer that offers health care or other medical coverage to its employees.

Under this new law, covered public employers are required to maintain and pay for continued health benefits for employees engaged in an authorized strike, as well as the employee's dependents, to the same extent and under the same conditions as if the employee had continued to work during the strike. The law also specifically prohibits employers from threatening to discontinue health benefits for striking employees, or from maintaining a policy that would authorize it. In addition, public employers are required to continue to collect and remit any employee contributions towards those health benefits as normal. The bill does not specify what to do if employees do not, or cannot, make their share of the payment.

For represented employees, the bill defines an authorized strike as one sanctioned by the central labor council or membership of the employee organization that represents the striking employees.

A violation of these restrictions is an unfair labor practice subject to the jurisdiction of the Public Employment Relations Board. As a remedy, the law requires that any premiums, contributions, or out-of-pocket expenses actually paid by the employee as a result of the violation be restored, along with any adjustments necessary to make the employee whole.

(AB 237 adds Sections 3140, 3141, and 3142 to the Government Code.)

SB 270 – Authorizes Special PERB Charge With Civil Penalty For Failure To Provide Unions With Employees' Contact Information.

Government Code Section 3558, part of the Public Employee Communications Chapter, requires public employers to provide labor representatives with the names and home addresses of newly hired employees, as well as their job titles, departments, work locations, telephone numbers, and personal email addresses, within 30 days of hire or by the first pay period of the month following hire. Public employers must also provide this information for all employees in a bargaining unit at least every 120 days, with limited exception. Under current law, a labor organization alleging a violation of this section can file an unfair labor practice charge with the Public Employment Relations Board, subject to PERB's normal procedures.

Effective July 1, 2022, SB 270 authorizes public employee unions to file a special form of UPC for an alleged violation of Section 3558, if the following requirements are met:

1. The union must give written notice to the employer of an alleged violation of Section 3558, including the facts and theories to support the alleged violation.

2. If the alleged violation is that the employer provided an inaccurate or incomplete list, the employer must have failed to cure the violation

within 20 calendar days by providing an accurate and complete list.

Notably, the opportunity to cure does not apply to any other violation, including, but not limited to, the failure to submit a list of newly hired employees or failure to provide a list of bargaining unit members within the statutory time periods.

An employer taking action to cure a violation, where applicable, must give written notice to the union of the curative action taken either electronically or by certified mail within the 20 calendar day period. SB 270 also limits a public employer's opportunity to cure violations to a maximum of three times in any 12-month period.

Where a union prevails on an unfair practice charge under these provisions, SB 270 subjects the public employer to a civil penalty payable to the state's General Fund, not to exceed $10,000. The exact amount of the penalty is left to PERB's discretion, based on (1) the public employer's annual budget; (2) the severity of the violation; and (3) any prior history of violations by the public employer.

SB 270 also requires PERB to award a prevailing party attorneys' fees and costs from the inception of proceedings through to PERB's final decision, except in the case of proceedings challenging the dismissal of a charge by PERB's general Counsel. The bill also allows PERB to recover attorney's fees in court proceedings to enforce a board order, or when defending a decision of the board after a party seeks judicial review, if PERB is the prevailing party.

(SB 270 amends Section 3558 of the Government Code.)

LITIGATION

SB 501 – Relaxes Tort Claim Presentation Deadlines For Minors And Incapacitated Persons.

Under the Government Claims Act, a public agency can generally only be held liable for damages to property or persons if the injured party presents a tort claim to the agency within six months. If the injured party misses this deadline, current law allows them to apply to submit an untimely claim within one year of the injury instead. Agencies must grant this application in certain circumstances, such as if the person was a minor child during the entire six-month period, or if their failure to present a timely claim was due to being incapacitated for the entire six-month period.

SB 501 was enacted to avoid unjust application of this rule in edge cases, such as where a minor claimant turned 18 just before the six-month deadline. Under current law, that claimant would not be eligible for the extended deadline. The bill amends the Government Claims Act to provide the automatic grant of an application for leave to file an untimely claim to an injured party who was a minor child or incapacitated for any portion of the original six-month deadline, so long as the application is filed within six months of the person turning 18 or no longer being incapacitated, or within one year after the injury, whichever comes first.

(SB 501 amends Sections 911.6 and 946.6 of the Government Code.)

OPEN MEETINGS & PUBLIC RECORDS

AB 361 – Allows Governing Bodies To Meet Virtually During A State Of Emergency Or Public Health Emergency.

AB 361 was enacted on September 16, 2021, to allow legislative bodies to continue to meet virtually during the ongoing public health emergency. The law was designated as urgency legislation and therefore went into effect immediately as of September 16, before existing executive orders providing similar authority expired.

Generally, the Ralph M. Brown Act (Brown Act) requires that all meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate in such meetings, except in limited circumstances. The Brown Act allows for legislative bodies to hold meetings by teleconference, but imposes very specific requirements for doing so, including that the legislative body (1) provide public notice of the teleconference location of each member participating remotely; and (2) allow the public to access each teleconference location and address the legislative body from such a location. In March 2020, and again in June 2021, the Governor issued Executive Orders suspending some of these requirements, and allowing legislative bodies to meet

virtually without providing members of the public the right to access the locations from which members of such legislative bodies participated.

Under AB 361, legislative bodies are allowed to meet virtually during a proclaimed state of emergency if any of the following apply:

1. State or local officials have imposed or recommended measures to promote social distancing;

2. The purpose of the meeting is to determine whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or

3. The legislative body has already determined that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

If those criteria are met, the legislative body may meet virtually, so long as it provides for all of the following in order to protect the rights of the public to access and participate in the meeting:

1. Give public notice of the meeting and post agendas;

2. Conduct the virtual meetings in a manner that protects the statutory and constitutional rights of the parties and the public;

3. Provide members of the public access to the meeting and an opportunity to address the body directly;

4. Provide members of the public the opportunity to comment in real time, without a requirement to submit comments in advance;

5. Suspend further action on items in the meeting agenda in the event that there is a disruption in the ability of the meeting to be broadcast to members of the public or in the ability for members of the public to comment;

6. Avoid closing any timed public comment period until such time has lapsed.

When there is a continuing state of emergency, in order for the legislative body to continue to meet virtually, it must reconsider the need for virtual meetings at least every 30 days and find, by a majority vote, that (a) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing.

For local agencies, the provisions of AB 361 remain in effect until January 1, 2024.

(SB 361 amends Section 54953 of, and adds Section 11133 to, the Government Code, and adds Section 89305.6 to the Education Code.)

AB 473 – Reorganizes And Recodifies The California Public Records Act.

This bill recodifies and reorganizes the entirety of the California Public Records Act (CPRA), although the effective date of the change is delayed until January 1, 2023. The bill expressly states that the Legislature intended the reorganization to make no substantive change to the CPRA. The primary difference between the current CPRA and the reorganized version is that the latter splits up the various exemptions previously found in subdivisions of Government Code Section 6254 into multiple independent code sections, making the exemptions easier to read. Once the recodification takes effect, public agencies should review any policies regarding inspection of public records and update statutory citations accordingly.

(AB 473 adds Section 6276.50 to, and adds Division 10 (commending with Section 7920.000) to Title 1 of the Government Code.)

SB 274 – Requires Agencies To Deliver Meeting Agenda Packets To The Public By Email On Request.

California's open meetings law, the Ralph M. Brown Act, requires that meetings of a local agency's governing body be open to the public, except in specific circumstances. The Brown Act also requires that on request by a member of the public, the agency must mail that person a copy of the agenda for a governing body meeting, or a copy of all the documents constituting the agenda packet.

SB 274 aims to improve accessibility of these materials. It does this by allowing members of the public to request delivery of agendas and agenda packets by email. Under SB 274, if a person requests a copy of a local agency governing body meeting agenda or agenda packet, the agency must email the person either the requested documents or a link to a website where the documents can be accessed. If a local agency determines that it is technologically

infeasible to send an entire agenda packet by email or make it available online, the agency has the option to instead send only the agenda by email and mail the remainder of the agenda packet.

(SB 274 amends Section 54954.1 of the Government Code.)

PUBLIC SAFETY

AB 26 – Imposes Higher Minimum Standards For Law Enforcement Use-Of-Force Policies.

In 2019, the California Legislature enacted Government Code Section 7286, which requires all law enforcement agencies in the state to maintain policies that provide a minimum standard on the use of force. These policies must include, among other elements, a requirement that peace officers make a report of potential excessive force to a superior officer when they observe another officer using force they believe to be beyond what is necessary. They must also require an officer to intercede when present and observing another officer using clearly excessive force.

Assembly Bill 26 expands on this statute by adding several additional minimum requirements for agencies' use-of-force policies, effective January 1, 2022:

1. Agencies' policies must now require officers to "immediately" make reports of potential excessive force.

2. Polices must prohibit agency employees from retaliating against an officer that reports a suspected violation of law or regulation to a supervisor or other person with authority to investigate the alleged violation. For purposes of this requirement, "retaliation" includes demotion, failure to promote, denial of access to training and professional development opportunities, denial of access to resources necessary for an officer to properly perform their duties, intimidation, harassment, or the threat of injury while on or off duty.

3. When an abuse-of-force complaint against an officer is substantiated, agency policies must include procedures that prohibit that officer from training other officers for at least three years.

4. Agency policies must require that an officer who has received the necessary training on the requirement to intercede against clearly excessive force, and who fails to intercede when required, is subject to discipline up to and including that imposed against the officer that used the excessive force.

(AB 26 amends Section 7286 of the Government Code.)

AB 48 – Restricts Law Enforcement Use Of Less-Lethal Munitions To Disperse Protests; Increases Frequency Of Mandatory Use-Of-Force Reporting.

Assembly Bill 48 enacts restrictions on the types of force law enforcement can use in response to protests. As a general rule, the bill prohibits the use of "kinetic energy projectiles" (such as rubber or plastic bullets, or "beanbag" rounds) and "chemical agents" (such as tear gas, pepper balls, and pepper spray) to disperse any assembly, protest, or demonstration, except in compliance with several requirements.

Specifically, in order for law enforcement to lawfully use these tools to disperse a protest, AB 48 requires that all of the following requirements are met:

1. They must only be deployed by a peace officer that has received POST-approved training on their proper use for crowd control.

2. The use must be objectively reasonable to defend against a threat to life or serious bodily injury to an individual, or to bring an objectively dangerous and unlawful situation safely and effectively under control.

3. De-escalation techniques and other alternatives to use of force must have been attempted, when reasonable, and must have failed if attempted.

4. Repeated, audible announcements must have been made announcing the intent to use kinetic energy projectiles or chemical agents and the type to be used, when it is objectively reasonable to do so. These announcements must be made from various locations if necessary, and be delivered in multiple languages when appropriate.

5. Persons must be given an objectively reasonable opportunity to disperse and leave the scene.

6. Law enforcement must have made an objectively reasonable effort to identify persons who are, or who are not, engaged in violent acts, with kinetic

energy projectiles or chemical agents targeted towards those individuals who are engaged in violent acts. Projectiles must not be aimed indiscriminately into a crowd or group.

7. These munitions must only be deployed with a frequency, intensity, and manner that is proportional to the threat and objectively reasonable.

8. Officers must minimize the possible incidental impact their use of force may have on bystanders, medical personnel, journalists, or other unintended targets.

9. Medical assistance must be promptly provided or procured for injured persons, when it is reasonable and safe to do so.

10. Kinetic energy projectiles must not be aimed at the head, neck, or vital organs.

11. Kinetic energy projectiles and chemical agents must not be used solely due to a violation of curfew, verbal threat, or noncompliance with a law enforcement directive.

12. Only a commanding officer at the scene may authorize the use of tear gas.

In addition, AB 48 requires all law enforcement agencies to publish a summary of any incident where a peace officer employed by that agency uses a kinetic energy projectile or chemical agent for crowd control. These summaries must be published on the agency's website within 60 days, or 90 days if the agency has "just cause" for the delay. The summary must include only the following, to the extent known at the time of the report:

1. A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and number of officers involved;

2. The type of kinetic energy projectile or chemical agent deployed;

3. The number of rounds or quantity of chemical agent used;

4. The number of documented injuries as a result of the deployment;

5. The justification for the deployment, including any de-escalation tactics or protocols or other measures taken at the time to avoid the necessity of deploying the kinetic energy projectile or chemical agent.

AB 48 also amends an existing law requiring law enforcement agencies to make annual reports to the California Department of Justice regarding officer-involved shootings and incidents where use of force by or against a peace officer results in serious bodily injury or death. Under AB 48, law enforcement agencies are required to make these reports on a monthly basis instead.

(AB 48 adds Section 13652 to the Penal Code, and amends Section 12525.2 of the Government Code.)

AB 57 – Raises Requirements For Peace Officer Training And Agency Policies Regarding Hate Crime Prevention.

Responding to a 2018 State Auditor report, the Legislature enacted AB 57 to improve underreporting of hate crimes. It does this by implementing specific requirements for peace officer training and agency policies. Existing law requires local law enforcement agencies to adopt and maintain a hate crimes policy, and sets a number of specific requirements for what such a policy must include. AB 57 adds a requirement that the hate crime policy must instruct officers to consider whether a suspected religion-bias hate crime involved targeted attacks on, or biased references to, religious symbols or articles considered to have spiritual significance in a particular religion. Agency hate crime policies must also include discriminatory selection of victims as a form of bias motivation.

In addition, AB 57 requires the Commission on Peace Officer Standards and Training (POST) to develop and release additional training materials for peace officers regarding identifying and investigating hate crimes:

1. In November 2017, POST developed a video course entitled "Hate Crimes: Identification and Investigation." The bill requires POST to incorporate that course, or any updated versions of that course, into the training program leading to a Basic POST certificate.

2. POST must also to make the video course available to stream via the POST Learning Portal.

3. POST must develop an interactive training course of in-service peace officers on the topic of

hate crimes, make that course available via the Learning Portal, and periodically update that course.

Finally, the bill requires that all in-service peace officers complete one of the two courses described above, or any other POST-certified hate crimes course, within one year of POST making the video course available, and at least every six years thereafter.

(AB 57 amends Sections 422.87 and 13519.6 of the Government Code.)

AB 89 – Raises Minimum Age For Peace Officers; Launches Development Of A Community College Degree In Modern Policing.

Assembly Bill 89, also titled the Peace Officers Education and Age Conditions for Employment (PEACE) Act, was enacted to implement reforms to minimize the use of deadly force, based on legislative findings derived from research on early-adulthood cognitive development, and the effect of education on peace officers' work performance. Most significantly, AB 89 raises the minimum age of employment for most types of state and local peace officers from 18 to 21. The increased minimum age does not apply to anyone who is already employed as a peace officer or enrolled in a basic police academy as of December 31, 2021. The bill also does not apply to certain types of specialized peace officers, such as park rangers, security officers, and some correctional officers.

In addition, the bill directs the Chancellor of the California Community Colleges, with the advice of the Commission on Peace Officer Standards and Training (POST) and other stakeholders, to develop a "modern policing degree" program focusing on courses such as psychology, communications, history, ethnic studies, law, and other courses determined to develop critical thinking and emotional intelligence. The bill requires the Chancellor to submit a report to the Legislature by June 1, 2023 with recommendations on the adoption of such a program.

Curiously, the bill directs POST to adopt a new minimum educational requirement for peace officers within two years after the Chancellor's report, but, due to an apparent legislative drafting error, it is not clear that POST has statutory authority to do so. Based on the bill's drafting history, it appears the Legislature's intent is to eventually require all new peace officers to have at least either a bachelor's degree or the newly-developed modern policing degree. Since the bill gives POST until 2025 to adopt this requirement, it is likely there will be some clean-up legislation clarifying this aspect of the bill.

(AB 89 adds Section 1031.4 to the Government Code, and adds Section 13511.1 to the Penal Code.)

AB 389 – Authorizes Counties To Contract For Emergency Ambulance Services With A Fire Agency That Subcontracts With A Private Ambulance Service Through Competitive Bidding Process.

AB 389 is intended to override draft regulations proposed by the Emergency Medical Services Authority (EMSA) which would prohibit the currently-approved public-private partnership model regarding subcontracting for emergency ambulance services. AB 389 permits counties to retain independent statutory contracting authority regarding subcontracting for emergency services.

Specifically, AB 389 authorizes, in pertinent part, a county to contract for emergency ambulance services with a fire agency that will provide those services, in whole or in part, through a written subcontract with a private ambulance service, and permits the fire agency to enter into such a subcontract.

However, AB 389 also imposes restrictions on such contract. As of January 1, 2022, a county may not enter into or renew such a contract unless the county's board of supervisors adopts, by ordinance or resolution, a written policy describing issues to be addressed in the county's contract for emergency ambulance services. AB 389 indicates such a policy may include, but is not limited to, all of the following:

1. Employment retention requirements for the employees of the incumbent ambulance service;

2. Demonstrated experience serving similar populations and geographic areas;

3. Diversity and equity efforts addressing the unique needs of vulnerable and underserved populations of the service area;

4. Financial requirements, including requiring a private ambulance service provider to show proof of insurance and bonding; and

5. A description of the ambulance service provider's public information and education activities and community involvement.

If a county subcontracts for emergency ambulance services, AB 389 also requires the County to demonstrate:

1. How the contract will provide for the payment of comparable wages and benefits to all ambulance service employees consistent with those provided to ambulance service employees in the same region; and

2. That the staffing levels for ambulance service employees will be comparable to the staffing levels under the county's previous contract.

Additionally, AB 389 requires the contracting fire agency to adopt a written policy that requires the written subcontract to be awarded pursuant to a competitive bidding process consistent with Section 20812 of the Public Contract Code. The fire agency's written policy shall set forth issues to be considered during the competitive bidding process, which may include, but are not limited to, all of the following:

1. Whether safeguards are in place to prevent an entity submitting a bid from participating in the deliberations of the fire agency in awarding the subcontract;

2. Whether consideration for awarding the written subcontract is given only to bidders who submit complete applications in response to a written request for proposals, written request for qualifications, or other similar written request for bids. The written request shall not be prepared in whole or in part by any entity submitting a bid in the competitive bidding process.

3. Whether the written request adequately describes criteria to evaluate a bidder's demonstrated ability and commitment to providing cost-efficient and high-quality services, which may include, but are not limited to, the following:

   (A) Experience and history providing emergency ambulance services in a safe and efficient manner;

   (B) Managerial experience and qualifications of key personnel;

   (C) Effectiveness of operational processes and assets, including quality of ambulance fleet and equipment, dispatch, customer service, and working conditions of ambulance personnel;

   (D) Performance monitoring and quality control;

   (E) Reasonable service rates and charges; and

   (F) Financial stability to maintain an uninterrupted and consistent level of service.

AB 389 also requires a fire agency that enters into a subcontract with a private ambulance service to provide the ambulance service provider with reasonable advance written notice of any operational changes under the subcontract.

Finally, AB 389 requires the fire agency to use best efforts to address concerns raised by the ambulance service provider employees regarding any operational changes under the subcontract and to communicate its written responses to those concerns to the ambulance service provider. AB 389 describes additional requirements for bidding ambulance services to include certain information in written requests for bids.

(AB 389 adds Sections 1797.230 and 1797.231 to the Health and Safety Code.)

AB 450 – Establishes Paramedic Disciplinary Review Board; Imposes Reporting Requirements On Paramedics' Employers.

Under existing law, the Emergency Medical Services Authority is tasked with establishing training standards for emergency medical technicians and paramedics, as well as issuing EMT and paramedic licenses. The EMSA also has authority to take adverse actions against license holders, such as suspending or revoking a paramedic license.

AB 450 establishes a seven-member Paramedic Disciplinary Review Board within the EMSA, the primary duty of which is to handle appeals of licensure actions by the EMSA, beginning January 1, 2023. The bill describes in detail the procedure to be used in such appeals. Among other requirements, the Board is required to consider any employer-imposed discipline in making a final determination regarding licensure appeals.

In addition, AB 450 requires that any employer of a paramedic must report to both the EMSA Director and to the Board any time a paramedic in their employ is terminated or suspended for cause, within 72 hours of the event. For purposes of this

requirement, a suspension or termination "for cause" means one of the following reasons:

1. Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice para-medicine.

2. Unlawful sale of controlled substances or other prescription items.

3. Patient neglect, physical harm to a patient, or sexual contact with a patient.

4. Falsification of medical records.

5. Gross incompetence or negligence.

6. Theft from patients, other employees, or the employer.

An employer who fails to report as required may be subject to an administrative fine up to $10,000 per violation. When an employer makes a report, the license holder has the opportunity to submit additional exculpatory or explanatory information for the Board's review.

(AB 450 amends Sections 797.112, 1797.172, 1797.185, 1797.194, 1798.200, 1798.210, and 1798.211 of, adds Article 2.5 (commending with Section 1797.125) to Chapter 3 of Division 2.5 of, and repeals Section 1798.204 of the Health and Safety Code.)

AB 481 – Restricts Law Enforcement Purchases And Use Of Military Equipment.

Assembly Bill 481 is intended to increase transparency, accountability, and oversight surrounding the acquisition and use of military equipment by state and local law enforcement, including but not limited to armored or weaponized vehicles, large-caliber firearms, explosive projectile launchers, explosive breaching tools, or "flashbang" grenades.

To this end, it requires any law enforcement agency to obtain approval from the agency's governing body before purchasing, raising funds for, or acquiring military equipment, by any means, including requesting surplus military equipment from the federal government. Agencies are also required to seek governing body approval before collaborating with another law enforcement agency in the deployment or use of military equipment within the governing body's territorial jurisdiction, or before using any new or existing military equipment in for a purpose, in a manner, or by a person not previously approved by the governing body.

Governing body approval under AB 481 must take the form of an ordinance adopting a publicly released, written military equipment use policy, which must address a number of specific topics, including the type, quantity, capabilities, purposes, and authorized uses of each type of military equipment, the fiscal impact of their acquisition and use, the legal and procedural rules that govern their use, the training required by any officer allowed to use them, the mechanisms in place to ensure policy compliance, and the procedures by which the public may register complaints. The governing body must consider a proposed military equipment use policy in open session, and may only approve a military equipment use policy if it makes various specific findings regarding the necessity of the military equipment and the lack of reasonable alternatives.

For cities that contract with another entity for law enforcement services, such as the County Sheriff, AB 481 gives the city the independent authority to adopt its own military equipment use policy based on local community needs.

For law enforcement agencies that already have existing military equipment, AB 481 provides a temporary exemption, but requires agencies to seek governing body approval for the continued use of that equipment no later than May 1, 2022.

AB 481 also requires any law enforcement agency that receives approval for the use of military equipment to submit annual reports to the governing body regarding the use of the equipment, any complaints received, any internal audits or other information about violations of the military equipment use policy, the cost of such use, and other similar information.

(AB 481 adds Chapter 12.8 (commencing with Section 7070) to Division 7 of Title 1 of the Government Code.)

AB 490 – Prohibits Arrest Techniques And Transport Methods That Create Risk Of Positional Asphyxia.

In 2020, the Legislature enacted Government Code Section 7286.5, which prohibits California law enforcement agencies from authorizing the use of a carotid restraint or choke hold by any peace officer employed by the agency.

AB 490 expands that law to also prohibit agencies from authorizing the use by peace officers of any technique or transport method that involves a substantial risk of positional asphyxia, which the bill defines as situating a person in a manner that compresses their airway and reduces the ability

to sustain adequate breathing. This includes, but is not limited to, the use of physical restraints that compresses the airway or impairs a person's breathing, including the unreasonable application of pressure or body weight against a restrained person's neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.

(AB 490 amends Section 7286.5 of the Government Code.)

AB 750 – Expands Prohibition On False Statements By Peace Officers In Police Reports.

Existing law makes it a crime for a peace officer to make a false statement in a police report, punishable by up to three years in prison. However, the law creates an exception for statements included in a police report that are attributed to a third party. AB 750 narrows the scope of this exception and expands the scope of the prohibition on false statements by peace officers.

Under AB 750, it is a crime for a peace officer to include in a police report a false statement attributed to another person if the officer preparing the report knows the statement is false and is including the statement to present it as true. The bill also makes it a crime for a peace officer to knowingly and intentionally making a false statement to another officer if that statement is included in a police report.

(AB 750 repeals and replaces Section 118.1 of the Penal Code.)

AB 958 – Prohibits Law Enforcement "Gangs."

Assembly Bill 958 is intended to tackle the issue of "gangs" among peace officers that might undermine the professional standards of policing among California's law enforcement agencies.

The bill defines a "law enforcement gang" as a group of peace officers within a law enforcement agency who identify themselves by a name or association with an identifying symbol, such as matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of policing. Such conduct might include any of the following:

- Excluding, harassing, or discriminating against an individual based on a legally protected category;
- Engaging in or promoting conduct that violates the rights of other employees or members of the public;
- Violating agency policy;
- The persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified;
- Falsifying police reports;
- Fabricating or destroying evidence;
- Targeting persons for enforcement based solely on legally protected characteristics;
- Theft;
- Unauthorized use of alcohol or drugs on duty;
- Unlawful or unauthorized protection of other members from disciplinary actions; or
- Retaliation against other officers who threaten or interfere with the activities of the group.

AB 958 requires law enforcement agencies to maintain a policy that prohibits participation in a law enforcement gang and makes violation of that policy grounds for termination. It also requires local agencies to cooperate in any investigation into law enforcement gangs by the Attorney General, an inspector general, or any other authorized agency. Moreover, except as specifically prohibited by law, AB 958 requires law enforcement agencies to disclose the termination of a peace officer for participation in a law enforcement gang to any other law enforcement agency conducting a pre-employment background investigation of that officer.

(AB 958 adds Section 13670 to the Penal Code.)

AB 1455 – Relaxes Procedural Restrictions On Civil Claims For Sexual Assault By Peace Officers.

This bill makes several distinct changes to the law in order to ease various procedural restrictions on bringing civil claims based on allegations of sexual assault by a law enforcement office while the officer was employed by a law enforcement agency.

First, it exempts these claims from the presentation requirements under the Government Claims Act. Generally, any claim against a government agency for death or injury to a person must be presented as a tort claim within 6 months. Under AB 1455, claims for sexual assault by a law enforcement officer while the officer was employed by a law enforcement are no longer subject to this restriction.

Second, the bill extends the statute of limitations for these claims. Under existing law, a civil action for damages as a result of sexual assault must be brought within 10 years after the last act or attempted act, or assault with intent to commit a sexual assault, or within 3 years from the date the plaintiff discovers that an injury or illness resulted. Under AB 1455, so long as the alleged assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency, the statute of limitations is instead the later of the following:

1. 10 years after the date of judgment against the officer in a criminal case arising out of the same operative facts, if a crime of sexual assault was alleged in the criminal case; or

2. 10 years after the officer is no longer employed by the law enforcement agency that employed the officer when the alleged sexual assault occurred.

Third, the bill revives any claim based on alleged sexual assault by a law enforcement officer that occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency, that has not already been litigated or settled and that would otherwise be barred by a statute of limitations or claims presentation deadline. Such a claim may be commenced notwithstanding the revived statute of limitations discussed above, if it is filed within 10 years after the last act or attempted act, or assault with intent to commit a sexual assault, or within 3 years from the date the plaintiff discovers that an injury or illness resulted.

(AB 1455 adds Section 945.9 to the Government Code.)

AB 1475 – Prohibits Law Enforcement From Sharing Booking Photos On Social Media.

AB 1475 prohibits law enforcement entities from sharing, on their social media pages, booking photos for individuals arrested for nonviolent crimes, unless any of the following circumstances exist:

1. A police department or sheriff's office has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing the suspect's image will assist in apprehending the suspect or reducing or eliminating the threat;

2. A court order is issued which permits the release of the suspect's image based on a finding that the release is in furtherance of a legitimate law enforcement interest; or

3. There is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.

AB 1475 further requires a law enforcement entity that shares, on social media, a booking photo of an individual arrested for a nonviolent crime to remove the photo from its social media page within 14 days, upon the request of the arrestee or the arrestee's representative.

AB 1475 also requires a law enforcement entity to remove a booking photo from its social media page for an individual arrested for a violent crime as identified in Penal Code Section 667.5(c) within 14 days of a request from the individual or the individual's representative if the individual or their representative demonstrates any of the following:

1. The individual's record has been sealed;

2. The individual's conviction has been dismissed, expunged, pardoned, or eradicated pursuant to law;

3. The individual has been issued a certificate of rehabilitation;

4. The individual was found not guilty of the crime for which they were arrested; or

5. The individual was ultimately not charged with the crime or the charges were dismissed.

6. AB 1475 applies retroactively as to any booking photo previously shared by law enforcement on social media.

(AB 1475 adds Section 13665 to the Penal Code.)

AB 1480 – Creates Exception To "Ban the Box" Law For Certain Nonsworn Employees Of Criminal Justice Agencies.

Under existing law, Section 432.7 of the Labor Code, also known as the "Ban the Box" statute, prohibits an employer from asking an applicant to disclose certain information about arrest history or conviction history, or from using such information to make an employment decision. Specifically, Section 432.7 protects (1) information concerning an arrest or detention that did not result in a conviction, (2) information concerning a referral or participation in, any pretrial or posttrial diversion program, or (3)

information concerning a conviction that has been judicially dismissed or ordered sealed, except in specified circumstances. However, Section 432.7 also creates an exception for applicants for employment as peace officers in sworn positions, persons already employed as peace officers, and persons seeking employment with the Department of Justice and other criminal justice agencies. These applicants and employees are not covered by the law, and employers may seek disclosure of arrest history and conviction history for them.

AB 1480 creates an additional narrow exception to Section 432.7 of the Labor Code by permitting employers to seek disclosure of a limited scope of information for certain nonsworn employees of a criminal justice agency. For the exception to apply, the employee's specific duties must relate to one of the following:

1. The collection or analysis of evidence or property;

2. The apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or,

3. The collection, storage, dissemination, or usage of criminal offender record information.

Where this new exception applies, disclosure and use of conviction and arrest history is limited to convictions and arrests for violent felonies, serious felonies, and crimes involving dishonesty or obstruction of legal processes, such as theft, embezzlement, fraud, forgery, perjury, and bribery.

AB 1480 also makes a corresponding change to Section 13203 of the Penal Code, which currently allows a criminal justice agency to release up to five years of arrest and detention history information about a peace officer or an applicant for a peace officer position. AB 1480 amends this to permit the release of information relating to nonsworn employees of a criminal justice agency, or applicants for nonsworn positions in a criminal justice agency.

(AB 1480 amends Section 432.7 of the Labor Code and Section 13203 of the Penal Code.)

SB 2 – Enacts Procedures For De-Certifying Peace Officers; Restricts Eligibility To Hold Office As Peace Officer; Enacts Additional Administrative Requirements For Law Enforcement Agencies.

On September 30, 2021, Governor Gavin Newsom signed into law Senate Bill 2 (SB 2), a bill that will significantly affect law enforcement agencies across the state. The bill's stated intent is to increase accountability for misconduct by peace officers and makes five significant changes, outlined below. Some aspects of the law will take effect on January 1, 2022. Other provisions have a later effective date.

1. Peace Officer Decertification

Under existing law, the Commission on Peace Officer Standards and Training (POST) sets minimum standards for recruitment and training of peace officers, develops curriculum for training courses, and issues professional certificates to peace officers in order to foster education, experience, and best practices in the profession. Currently, POST has the authority to cancel a certificate that was awarded in error or obtained fraudulently, but cannot otherwise cancel a previously-issued certificate. SB 2 significantly expands POST's authority in a variety of ways.

Most notably, SB 2 requires law enforcement agencies to employ as peace officers only those individuals who hold a current and valid Basic certificate from POST, except for provisional employment for up to 24 months of individuals awaiting certification.

SB 2 also requires POST to revoke certification when an individual has become ineligible to hold office as a peace officer under Government Code Section 1029, or when an individual has been terminated for cause for, or otherwise engaged in, "serious misconduct". The bill leaves the precise definition of "serious misconduct" open to regulatory interpretation by POST, but it specifies that the term shall at a minimum, include all of the following:

1. Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including making false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct;

2. Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest;

3. Physical abuse, including, but not limited to, the excessive or unreasonable use of force;

4. Sexual assault;

5. Demonstrating bias on the basis of any legally protected status, in violation of law or department policy, or in a manner inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner;

6. Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by POST;

7. Participation in a "law enforcement gang;"

8. Failure to cooperate with an investigation into potential police misconduct; and

9. Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances.

SB 2 also authorizes POST to conduct investigations to determine the fitness of any person to serve as a peace officer in California, and to conduct audits of agencies that employ peace officers. To this end, SB 2 establishes a Peace Officer Standards Accountability Division (Division) within POST, with the responsibility to review investigations conducted by law enforcement agencies, and to conduct its own investigations into misconduct that could provide grounds for suspension or revocation of a peace officer's certification. The Division will also have the responsibility to make findings and recommendations to the commission, to conduct administrative proceedings seeking suspension or revocation, and to accept complaints from members of the public recording peace officers or law enforcement agencies. The bill also amends Penal Code Section 832.7 (also known as the Pitchess statute) to allow disclosure to POST of otherwise-confidential peace officer personnel records.

Further, SB 2 directs the Governor to establish a Peace Officers Standards Accountability Board by no later than January 1, 2023. The purpose of the Board will be to hear the findings and recommendations from the investigative division and make recommendations on decertification to the POST commission. The Board will consist of nine members serving three-year terms, all but two of whom are appointed by the Governor:

- One peace officer or former peace officer with command experience.
- One peace officer or former peace officer with management experience in internal investigations or disciplinary proceedings of peace officers.
- Two members of the public with experience in police accountability issues working at nonprofit or academic institutions, one of which is appointed by the Speaker of the Assembly.
- Two members of the public with experience in police accountability issues working in community-based organizations, one of which is appointed by the Senate Rules Committee.
- Two additional members of the public, with "strong consideration" given to individuals who have been subject to wrongful use of force by a peace officer or surviving family members of a person killed by wrongful use of force by a peace officer.
- One attorney with professional experience involving oversight of police officers.
- The six members of the public and the attorney member may not be former peace officers.

A separate provision of SB 2 requires POST to notify the head of a law enforcement agency any time the commission launches an investigation into one of the agency's officers (unless notification would interfere with the investigation), any time such investigation finds grounds to initiate decertification proceedings, any time the commission decides to take action, and any time a hearing results in actual decertification or suspension.

2. Expansion of Criteria Disqualifying Individuals from Holding Office as a Peace Officer

Currently, under Government Code Section 1029, there are numerous circumstances that will disqualify an individual from holding office or being employed

as a peace officer in California. Most notably, a person will be disqualified if they have been convicted of a felony, or convicted of a non-felony offense in another jurisdiction that would have been a felony in California.

SB 2 amends Government Code 1029 to exclude the following individuals from peace officer employment:

1. An individual discharged from the military after adjudication by a military tribunal for committing an offense that would have been a felony if committed in California, whether or not the person received a criminal conviction for the offense.

2. An individual convicted of a felony, including by a guilty plea or a plea of nolo contendere, will remain disqualified even if a later court sets aside, vacates, withdraws, expunges, or otherwise reverses the conviction, unless the court specifically finds the person to be factually innocent of the crime for which they were convicted.

3. An individual convicted of any one of several specific enumerated crimes of dishonesty, or conduct in another jurisdiction that would have constituted one of those crimes if committed in California. The listed crimes include, but are not limited to, bribery, corruption, perjury, falsifying evidence, witness tampering, forging or falsifying government records, tampering with a jury or the jury selection process.

4. An individual adjudicated to have committed acts that would constitute one of those enumerated crimes in an administrative, military, or civil judicial process that requires at least "clear and convincing evidence."

5. An individual whose POST certificate was revoked (or denied) or who voluntarily surrendered the certification.

6. An individual whose name appears in the National Decertification Index or any similar database designated by the federal government and the individual's certification as a law enforcement officer was revoked for misconduct, or if the individual engaged in serious misconduct that – had they been employed in California – would have resulted in POST revoking their certificate.

In addition, the amended Section 1029 requires the California Department of Justice to supply POST with any disqualifying felony or misdemeanor conviction data for all persons known to be current or former peace officers.

3. Administrative and Reporting Requirements for Law Enforcement Agencies

Importantly, in addition to expanding POST's authority to investigate peace officer misconduct, SB 2 imposes a number of requirements on both state, county, and municipal law enforcement agencies. Most of these requirements do not take effect until January 1, 2023, or later. However, agencies should begin preparing to comply with these requirements as soon as possible.

a. Reporting requirements

Beginning on January 1, 2023, SB 2 will require all agencies that employ peace officers to begin submitting reports to POST any time one of the following occurs:

1. The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.

2. A complaint, charge, or allegation of conduct is made against a peace officer employed by the agency that could result in decertification.

3. A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a peace officer employed by the agency engaged in conduct that could result in decertification.

4. The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).

5. A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against a peace officer or the employing agency based on allegations of officer conduct that could result in decertification.

In each case, an agency will have 10 days to make the relevant report. For reports regarding separation of a peace officer, the bill requires

agencies to execute and submit an "affidavit-of-separation" form under penalty of perjury, which must describe the reason for separation and whether the separation is part of resolving or settling any pending charge or investigation. The officer who was separated "shall be permitted" to respond in writing to the affidavit-of-separation, explaining to POST their own understanding of the facts and reasons for the separation. The statutory language is not clear whether the officer's response is to be submitted along with the agency's report, or whether the officer submits it separately, directly to POST.

One key element of these reporting requirements is they do not appear to require that the reportable conduct is egregious enough to make it likely that POST will ultimately decertify the officer. Indeed, in the case of reporting complaints and civil settlements, it is enough that an allegation is made that – if true – could subject a peace officer to decertification, even if the complaint or civil claim is later proved untrue. Thus, the safe approach for any agency would be to take a broad approach to reporting, and leave it to POST to determine whether the facts of any given case are enough to warrant initiating decertification procedures. Where an agency does make a report to POST in good faith, SB 2 provides immunity from civil liability for the disclosure in good faith.

The bill does not specify a particular form or format for these reports, or for the affidavit-of-separation form, but directs POST to issue further guidance and adopt appropriate forms.

Although the reporting requirement does not begin until January 2023, it does apply to events that occurred before January 2023. SB 2 specifically requires agencies to report any instance of a listed event that took place between January 1, 2020, and January 1, 2023. For reports falling in that earlier timeframe, the reporting deadline will be July 1, 2023.

b. Investigation and record-keeping requirements
Beginning on January 1, 2023, all law enforcement agencies are required to complete any investigation into allegations of "serious misconduct" by a peace officer – i.e. conduct that could subject a peace officer to decertification – regardless of the employment status of the officer. This means that if a peace officer voluntarily resigns, retires, is released from probationary employment, is terminated on unrelated grounds, or separates from employment for any other reason so that no disciplinary action could take place, the agency is still required to complete any pending investigation of serious misconduct.

In addition, any time an agency has reported to POST a complaint, charge, or allegation of serious misconduct, the agency must retain the investigation records, including any physical or documentary evidence, witness statements, analysis, and conclusions, for at least two years after making the report. The agency must make these records available for inspection by POST on request.

c. Background check requirement
Any time an agency employs or appoints a peace officer who has previously worked as a peace officer for another agency, the hiring agency is required to contact POST to inquire as to the facts and reasons the officer was separated from any previous employing agency. POST is required to respond with any relevant information in its possession.

Due to the structure of the bill language, it is unclear whether this provision takes effect as of January 1, 2022, or if it is also delayed until January 1, 2023. It is likely POST will issue more guidance on this point. In the absence of additional guidance, it would likely be prudent for agencies to make these pre-employment inquiries to POST beginning in January 2022, even though POST is unlikely to have any responsive information until it begins receiving reports in 2023.

4. Removal of Immunity for Civil Rights Cases
Under current law, the Tom Bane Civil Rights Act, Civil Code Section 52.1, allows individuals to bring a civil claim for damages if their constitutional rights have been interfered with, or attempted to be interfered with, by threat, intimidation, or coercion. However, current law also contains a number of provisions that provide public employees and government agencies with qualified immunity from liability in civil cases.

SB 2 adds a provision to the Bane Act that would eliminate certain immunity provisions. Specifically, the following immunity provisions would no longer apply to civil actions brought under the Bane Act against peace officers, custodial officers, or directly against a public agency that employs them:

1. Government Code Section 821.6, which provides immunity to a public employee for injuries caused by "instituting or prosecuting" a judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause. This provision had previously been interpreted to cover a range of possible misconduct by peace officers conducted in the scope of investigating or reporting suspected crimes.

2. Government Code Section 844.6, which provides limited immunity to public entities for injuries to, or caused by, a prisoner (subject to a variety of existing exceptions).

3. Government Code Section 845.6, which provides limited immunity to public entities and public employees for injuries caused by a public employee's failure to obtain medical care for a prisoner in their custody.

Once SB 2 takes effect on January 1, 2022, peace officers, custodial officers, and their employing agencies will no longer be able to claim immunity from Bane Act claims on the basis of these specific provisions. However, other governmental immunity provisions could still apply depending on the facts and allegations of a specific case, and these immunities would still apply in civil actions other than those brought under the Bane Act.

SB 2 also amends the Bane Act to require public entities to provide indemnification to employees or former employees sued under the Act, to the same extent that existing law requires in tort cases.

(SB 2 amends Section 52.1 of the Civil Code, Section 1021 of the Government Code, and Sections 832.7, 13503, 13506, 13510, 13510.1, and 13512 of the Penal Code, and adds Sections 13509.6, 13509.6, 13510.8, 13510.85, and 13510.9 to the Penal Code.)

SB 16 – Increases Transparency Regarding Peace Officer Misconduct Records; Implements Additional Background Check And Record Retention Requirements.

Senate Bill 16 makes five significant changes to the law intended to aims to increase the level of transparency into allegations and investigations of peace officer misconduct, and accountability for such misconduct.

1. Expanded Disclosure of Peace Officer Personnel Records

SB 16 expands on Senate Bill 1421, enacted in 2018, in creating exceptions to the general rule that peace officer personnel records are confidential and not subject to disclosure. Under Penal Code Section 832.7, as amended by SB 1421, previously confidential peace officer personnel records are subject to disclosure under the Public Records Act if they relate to: (1) an officer-involved shooting, (2) use of force by a peace officer resulting in death or great bodily injury, (3) a sustained finding of dishonesty, or (4) a sustained finding of sexual assault by a peace officer. SB 16 expands this list, making the following records public:

1. Records of a sustained finding that an officer used unreasonable or excessive force;

2. Records of a sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force;

3. Records relating to sustained findings of unlawful arrest or unlawful searches;

4. Records relating to sustained findings that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of certain legally protected classes.

The bill also provides that agencies are required to release records relating to a covered incident in which the officer resigned before the agency concluded its investigation. However, most of the covered categories of incidents still require a "sustained finding," defined as "a final determination . . . following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code," so it remains unclear how this provision will apply in practice.

SB 16 also contains provisions regarding the logistics of producing disclosable records. The bill specifies that when records are sought through the Public Records Act, which allows agencies to charge the requesting party for the cost of copying, those costs shall not include the costs of searching for, editing, or redacting the records, an issue that had been litigated in the courts. It also specifies that except where a longer period of withholding is specifically permitted under Section 832.7, records subject to disclosure must be provided at the earliest possible time, no later than 45 days from the date of a request for

their disclosure. Moreover, the bill specifies that for purposes of releasing covered records, the attorney-client privilege does not protect any of the following:

1. "Factual information" provided by the public agency to the attorney;

2. "Factual information" discovered in any investigation conducted by, or on behalf of, the public entity's attorney;

3. Billing records related to work done by the attorney, except for records that relate to ongoing litigation, or that disclose information for the purpose of legal consultation.

2. Pre-Employment Background Check Requirement
Under existing law, specifically Section 832.12 of the Penal Code, every law enforcement agency in California is required to maintain records of misconduct investigations involving that agency's peace officers. Peace officers who apply for employment with another agency are required to give written permission for the hiring agency to view his or her personnel file. SB 16 adds to this provision and requires that, before hiring a peace officer, the hiring department or agency must request and review that file.

3. Record-retention Requirement
Existing law requires all law enforcement agencies to establish a procedure to investigate complaints by members of the public against their employees, and requires agencies to keep records of such complaints and any related reports or findings for at least five years.

SB 16 amends the law to expand this retention requirement. Under SB 16, if there was not a sustained finding of misconduct, then the records must be retained for at least five years, but if there was a sustained finding of misconduct, then the records must be retained for at least fifteen years. In addition, the bill prohibits agencies from destroying any record while a request related to that record is being processed, or while any process or litigation is ongoing to determine whether that record is subject to release.

Interestingly, the amended statutory language specifies that records covered by these requirements include "all complaints and any reports currently in the possession of the department or agency." This language appears to be intended to mean that, once SB 16 takes effect on January 1, 2022, all covered records must be retained for five or fifteen years, as applicable, starting on that date, regardless of how long the agency may have kept the records previously.

4. Individual Use-of-force Reporting Requirement
In addition to the above, SB 16 adds a requirement that every person employed as a peace officer shall "immediately" report all uses of force by that officer to their employing department or agency. The new law does not define what constitutes a "use of force," which may raise some issues regarding when reporting may be required. For example, at present, if an officer applies a wristlock in detaining a subject, many agencies would not require the officer to make a report. However, a wristlock would likely qualify as a "use of force" and may need to be reported under the new law.

5. Expanded Use of Peace Officer Records in Litigation
In general, a party to criminal or civil litigation who seeks discovery or disclosure of confidential personnel records of peace officers and custodial officers (i.e. records not subject to mandatory disclosure under Penal Code 832.7) must file a written motion known as a "Pitchess" motion with the relevant court or administrative body showing good cause for disclosure of the records. If the reviewing court finds good cause for discovery, it reviews the pertinent documents in chambers and discloses only the information that falls within statutorily defined relevance standards. Under existing law, the court is required to exclude complaints concerning conduct that occurred more than five years before the event that is the subject of litigation. SB 16 removes the five-year limitation.

(SB 16 amends Section 1045 of the Evidence Code, and Section 832.5, 832.7, and 832.12 of the Penal Code, and adds Section 832.13 to the Penal Code.)

SB 98 – Grants News Reporters Access To Certain Areas Closed By Law Enforcement During Protests, Marches, And Rallies; Prohibits Interference With Reporters By Law Enforcement.

SB 98 adds Section 409.7 to the Penal Code, allowing a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network to enter certain areas closed by law enforcement at a demonstration, march, protest, or rally where individuals are engaged primarily in activity protected pursuant to the First Amendment to the United States Constitution or Article I of the California Constitution. Specifically, the bill grants

news reporters access to closed areas surrounding any emergency field command post or any other command post, or behind an established police line or rolling closure.

SB 98 also prohibits a peace officer or other law enforcement officer from intentionally assaulting, interfering with, or obstructing the news representative who is gathering, receiving, or processing information for communication to the public.

SB 98 further provides that a duly authorized news representative shall not be cited for the failure to disperse, a violation of a curfew, or a violation of Penal Code Section 148(a)(1) (which prohibits willfully resisting, delaying, or obstructing any public officer, peace officer, or an emergency medical technician) for gathering, receiving, or processing information.

Finally, SB 98 provides that, if a news representative is detained by a peace officer or other law enforcement officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

(SB 98 adds Section 409.7 to the Penal Code.)

SB 296 – Requires Local Agencies To Develop Safety Standards For Code Enforcement Officers.

Existing law allows law enforcement agencies to employ "code enforcement officers," non-sworn personnel with authority to enforce health, safety, and welfare requirements, and to issue citations or file formal complaints, but who are not peace officers. The legislature enacted SB 296 to address certain risks to the health and safety of local code enforcement officers, whom the Legislature stated are "disproportionately at risk for threat, assault, injury, and even homicide due to the nature of their obligations."

SB 296 requires each local jurisdiction that employs code enforcement officers to develop safety standards tailored to the specific issues and risks which exist for code enforcement officers employed by that jurisdiction.

(SB 296 adds Section 829.7 to the Penal Code.)

RETIREMENT

AB 845 – Creates Temporary Presumption Of Eligibility For Industrial Disability Retirement For Certain Cases Of COVID-19-Related Illness.

AB 845 creates a temporary rule, requiring California's public retirement systems to presume that a disability retirement based at least in part due to a COVID-19 related illness arose out of the member's employment, thus making the member eligible for industrial disability benefits, if certain criteria are met. Specifically, the presumption applies to (1) job classifications described in subdivision (a) of Section 3212.87 of the Labor Code (firefighter, public safety officer, and health care job classifications), or their functional equivalents; and (2) members in other job classifications who test positive during an COVID-19 outbreak at the member's specific place of employment.

Where the presumption applies, it can be rebutted by evidence to the contrary, but unless controverted, the applicable governing board of a public retirement system would be required to find in accordance with the presumption. The bill does not otherwise change the eligibility requirements for an industrial disability retirement.

The presumption will remain in effect only until January 1, 2023, and sunsets automatically on that date.

(AB 845 adds Sections 7523, 7523.1, and 7523.2 to the Government Code.)

SB 278 – Shifts Financial Exposure To Employers For CalPERS Compensation Reporting Errors.

The Public Employees' Retirement Law (PERL) provides a defined benefit retirement plan administered by CalPERS, for employees of participating public agencies. In 2013, the Public Employees' Pension Reform Act (PEPRA) made changes to the categories of compensation that can be included in some employees' retirement benefit calculation. The complex scheme of governing statutes, regulations, and administrative guidance sometimes leads to unintended reporting errors. In addition, because the specific items of compensation at a given agency are often the product of negotiations, the parties sometimes inadvertently negotiate criteria that makes a pay item non-reportable on technical grounds.

Under existing law, if CalPERS determined that a disallowed item of compensation was included when calculating a retiree's retirement benefit allowance, the retiree would have to repay CalPERS for the amount that was overpaid, and their retirement allowance would be reduced going forward based on what they should have received if the improper pay item was not reported. SB 278 was enacted to protect retirees from this kind of financial exposure, and in doing so, it transfers almost all of the risk of misreported compensation to the employer.

Under SB 278, local agencies must pay CalPERS the full cost of any overpayments received and retained by the retiree, as well as a 20-percent penalty of the present value of the projected lifetime and survivor benefit. Ninety percent of the penalty is paid directly to the retiree and 10 percent is paid as a penalty to CalPERS.

For current employees, SB 278 does not make significant changes, as it allows improper contributions to act as a credit towards a public agency's future contributions, and any contributions paid by the employee on the disallowed compensation is returned. There are no overpayments to address because the employee has not yet retired or started receiving a retirement allowance.

With respect to retired members, the penalty is triggered where the following conditions are met:

1. The compensation was reported to the system and contributions were made on that compensation while the member was actively employed;

2. The compensation was agreed to in a memorandum of understanding or collective bargaining agreement between the employer and the recognized employee organization as compensation for pension purposes and the employer and the recognized employee organization did not knowingly agree to compensation that was disallowed;

3. The determination by the system that compensation was disallowed was made after the date of retirement; and

4. The member was not aware that the compensation was disallowed at the time it was reported.

The statutory language raises several questions that will require guidance from CalPERS or may need to be litigated, both with regard to the specific criteria outlined above, and with regard to the enforcement of the retroactive component of the statute. In addition, the statute leaves unresolved lingering questions about what statute of limitations applies to CalPERS when seeking to collect overpayments from employers. LCW will continue to monitor any new guidance issued regarding this statute.

If the statute is interpreted to have broad retroactive effect, it may very well incentivize CalPERS to start aggressively auditing local agencies, because any unfunded liabilities for inadvertently misreported compensation would be shifted directly to the employer and compensation carrying unfunded liabilities can be removed from the books. CalPERS also receives a portion of the prospective reduction of benefits as a penalty against the agency. The potential combined retroactive liability and penalties for public employers could be significant – and impossible to predict. While SB 278 has a provision for CalPERS to review labor agreements prospectively and provide guidance, the statute does not specify that CalPERS' approval will be binding and prevent a later negative determination.

Public agencies should consult with trusted legal counsel to scrutinize pay items currently being reported to CalPERS and correct any compliance issues identified as soon as possible to reduce the potential financial exposure for future retirees.

(SB 278 adds Section 20164.5 to the Government Code.)

SB 411 – Gives CalPERS Discretionary, Rather Than Mandatory, Authority To Reinstate Retired Annuitants Who Violate Post-Retirement Work Restrictions.

The Public Employees' Retirement Law (PERL) generally prohibits retired CalPERS members from working for a CalPERS contracting agency without being reinstated into active membership, unless the employment falls under one of a few narrowly drawn exceptions. The employment must also follow various technical restrictions, such as not working more than 960 hours in a fiscal year.

Under existing law, if a retired annuitant's employment violates these restrictions, the employee must be reinstated into active membership, must reimburse CalPERS for any retirement allowance received during the period of the unlawful employment, and must pay CalPERS for the employee's share of contributions that would have been due on their compensation. Similarly, the

annuitant's employer must pay CalPERS for the employer contributions that would have been due on the employee's compensation. Both annuitant and employer must reimburse CalPERS for administrative costs. SB 411 was enacted to mitigate the potential impact of violating these provisions, which in some instances have left individual annuitants owing CalPERS tens of thousands of dollars for inadvertent violations of the law.

Under SB 411, CalPERS will now have discretionary authority to require a retired member to reinstate as an active member, rather than reinstatement being mandatory. The bill also provides that retired annuitants and employers who violate the post-retirement work rules are required to pay retroactive contributions for the period of unlawful employment only if the retiree is reinstated to active membership. The bill does not change the obligation to reimburse CalPERS for overpaid pension benefits, or for administrative costs.

(SB 411 amends Sections 21202 and 21220 of the Government Code.)

SB 634 – Makes Clarifying And Technical Changes To Public Retirement Laws.

SB 634 makes technical clarifying changes to various portions of the Education and Government Codes regulating the California State Teachers' Retirement System (CalSTRS), the California Public Employees' Retirement System (CalPERS), and the County Employees Retirement Law of 1937 ('37 Act) retirement systems. The most notable changes in the law applicable to public agencies are discussed below. The bill also makes stylistic and non-substantive changes.

1. CalPERS

Under the PERL, CalPERS membership excludes specified appointees, elective officers, and legislative employees from membership in the system unless such a person affirmatively elects to file with the Board an election in writing to become a member.

SB 634 clarifies that if CalPERS receives an optional member's written election within 90 days of the applicable appointment, current term, or start date for the position, CalPERS will enroll the employee as of the member's start date. Otherwise, CalPERS will enroll the member on the first day of the month it receives the enrollment form.

SB 634 further clarifies that CalPERS has authority to recover any overpayment of benefits after the death of a member, retired member, or beneficiary, by deducting the overpayment from any payment or benefit that is payable as a result of that death.

2.'37 Act

The '37 Act vests management of each county retirement system created pursuant to its provisions in a board of retirement. The '37 Act requires the county health officer to advise the board on medical matters and, if requested, attend its meetings. SB 634 clarifies that a duly-authorized representative of the county health officer may advise a '37 Act retirement board on medical matters on behalf of the county health officer, and that a '37 Act retirement board may contract with a private physician to provide medical advice related to processing disability claims.

SB 634 also clarifies that a '37 Act retirement system member's unmarried children enrolled full-time in school are eligible to receive the member's death benefit up to the children's respective 22nd birthdays.

(SB 634 amends Sections 22011, 22302, 22802, 24204, and 26804 of the Education Code, and amends Sections 20309, 20320, 20322, 20324, 22820, 31530, 31565.5, 31680.2, 31680.3, 31732, and 31781.2 of, and adds Section 21499.1 to the Government Code, relating to retirement.)

SETTLEMENT AGREEMENTS

SB 331 – Expands Existing Restrictions Against Employment-Related Non-Disparagement Agreements Non-Disclosure Clauses In Settlement Agreements.

In 2019, the Legislature adopted several laws that restricted the use of "non-disclosure" provisions in employment related agreements. Those existing restrictions prohibit any provision in a settlement agreement that prevent the disclosure of information related to claims regarding certain forms of sexual assault, sexual harassment, workplace harassment or discrimination based on sex, failure to prevent workplace harassment or discrimination based on sex, or retaliation for reporting workplace harassment or discrimination based on sex. Existing law also makes it unlawful for an employer, as a condition of continued or future employment, or in exchange for a raise or bonus, to sign a non-disparagement

agreement or other document that purports to restrict the employee's right to disclose such information. SB 331 expands these provisions.

Under SB 331, a settlement agreement may not contain a provision that prevents or restricts disclosure of factual information related to a claim filed in a civil or administrative action regarding any form of discrimination based on protected classifications.

SB 331 also expands the restrictions on employment-related non-disparagement or non-disclosure agreements in several ways:

1. Such agreements are now unlawful to the extent it has the purpose or effect of denying an employee's right to disclose information about unlawful acts in the workplace, not only if the agreement actually purports to deny such rights.

2. Any contractual provision that restricts an employee's ability to disclose information related to conditions in the workplace must include the following statement, or substantially similar language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

In addition, SB 331 prohibits an employer from including any provision that prohibits the disclosure of information about unlawful acts in the workplace in an agreement related to an employee's separation from employment, except in a negotiated settlement agreement to resolve an underlying claim filed by an employee in court, before an administrative agency, in an alternative dispute resolution forum, or through an employer's internal complaint process. For this exception to apply, the agreement must be voluntary, deliberate, and informed, the agreement must provide consideration of value to the employee, and the employee must be given notice and an opportunity to retain an attorney or be represented by an attorney.

(SB 331 amends Section 1001 of the Code of Civil Procedure, and Section 12964.5 of the Government Code.)

WAGES, HOURS, & WORKING CONDITIONS

AB 444 – Expands Options For Processing Final Wages For Public Employees.

Under existing law, various sections of the Government Code govern the processing of final wages for deceased public employees. For state employees, the law allows employees to designate a "person", which includes a corporation, trust, or estate, to receive their final paycheck. For local employees, the process is similar, but the law does not specify that an employee's designated "person" can include a corporation, trust, or estate. AB 444 clarifies that a local employee can designate a corporation, trust, or estate as the "person" designated to receive their final wages, just as a state employee can.

The bill also amends the process for state employees to allow issuance of a new check in the designated person's name, in order to avoid potential conflicts with financial institutions' third-party check cashing restrictions.

(AB 444 amends Sections 12479 and 53245 of the Government Code.)

SB 639 – Phases Out The Subminimum Wage Certificate Program.

Under existing law, the Division of Labor Standards Enforcement (DLSE) is permitted to issue a person who is mentally or physically disabled, or both, a special license authorizing employers to hire such person for one year or less, at a wage below the state-wide minimum wage. The DLSE is required to fix a special minimum wage for the licensee, which may be renewed on a yearly basis. This law was originally enacted due to fears that people with disabilities would be disadvantaged if employers had to pay comparable wages to employees with and without disabilities.

SB 639 was enacted due to Legislative findings that despite these existence of these licenses, and despite people with disabilities often earning significantly less than minimum wage, unemployment rates among people with disabilities remains disproportionately high. For this reason, taking the lead of a number of other states, SB 639 phases out the subminimum wage certificate program, and prohibits new special licenses from being issued after January 1, 2022. Under SB 639, a special license can only be renewed for existing

licenseholders who meet benchmarks described in a multiyear phase out plan, to be developed by the State Council on Developmental Disabilities with input from various stakeholder organizations. The bill aims to ensure any disabled employee is paid no less than minimum wage by January 1, 2025.

In addition, SB 639 adds a sunset provision to Section 1191.5 of the Labor Code, which currently authorizes the DLSE to issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to allow employment of qualified disabled employees at subminimum wage without requiring individual licenses of those employees. Under SB 639, Section 1191.5 will be repealed as of January 1, 2025.

(SB 639 amends Section 1191 of, and amends and repeals Section 1191.5 of the Labor Code.)

SB 657 – Permits Employers To Distribute Legally-Required Notices By Email, In Addition To Physical Posting.

Existing law requires employers to post a variety of information in the workplace related to employees' wages, hours, and working conditions. Generally, these notices are designed to alert employees of their rights under federal and state law, including information on how they may go about reporting a workplace violation or filing a complaint with the appropriate state agency, and provide information about the state minimum wage, state laws regarding harassment and discrimination, health and safety rules, and whistle blower protection, among others.

SB 657 provides when an employer is required to physically post information in the workplace, the employer may email the information to the employee as well as an attached document in addition to physically posting the information in the workplace. The bill expressly does not alter the employer's obligation to physically display the required posting.

(SB 657 adds Section 1207 to the Labor Code.)

BUSINESS & FACILITIES

AB 891 – Clarifies That A Representation By A Minor That The Minor's Parent Or Legal Guardian Has Consented Is Not Sufficient To Obtain Parental Consent For Contract Formation Purposes.

This bill provides that a representation by a minor that the minor's parent or legal guardian has consented shall not be considered to be consent for purposes of contract formation. The bill is intended to address circumstances where parental consent is required before a company may interact with a minor online or enter into binding contracts with a minor, and parental consent is obtained by having the minor affirm that the minor's parent consented. Instead, this bill attempts to make clear that the consent must be obtained directly from a parent.

(AB 891 adds Section 1568.5 to the Civil Code.)

SB 762 – Requires That Arbitration Providers, Such As AAA And JAMS, Provide Parties To Employment Or Consumer Arbitration Matters With Timely Invoices And Requires That Any Time Period Specified In A Contract Of Adhesion For The Performance Of An Act Must Be Reasonable.

SB 762 adds a requirement to the law that arbitration providers in consumer or employee arbitrations, such as AAA or JAMS, will immediately provide an invoice to all parties to the arbitration for any fees and costs required before the arbitration can proceed to all of the parties to the arbitration. The invoice must state the full amount owed and the date that payment is due. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt.

The purpose of this law is to close a gap with respect to the payment of fees and costs for arbitration. Current law states that if the drafter of the arbitration agreement does not pay all fees and costs due before the arbitration can proceed within 30 days of the due date for paying those fees and costs, the drafting party is in material breach of the arbitration agreement and the other party to the agreement may elect to proceed with the arbitration or bring the case in court. However, existing law does not impose any requirements on when an arbitrator must send invoices or whether and how the payment's due date must be disclosed. This gives rise to a question as to when a party is actually past due on a payment,

which in turn causes ambiguity as to when a party is 30 days late and therefore in material breach of the arbitration agreement. This bill attempts to address that problem by establishing when an arbitration provider must send an invoice, as well as requiring the invoice to contain the total amount due and the due date.

This bill further provides that, where an arbitration agreement does not establish a time frame for paying an arbitration invoice, the payment is due upon receipt. Additionally, this bill requires all parties to an arbitration to agree to a payment extension before the arbitration provider will allow a payment extension. Finally, this bill adds a code section addressing the time to perform under contracts of adhesion (which includes many arbitration agreements), stating that any time for performance of an act set forth in a contract of adhesion must be reasonable.

(SB 762 adds Section 1657.1 to the Code of Civil Procedure and amends Sections 1281.97 and 1281.98 of the Code of Civil Procedure.)

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