LCW 2021

EDUCATION LEGISLATIVE ROUNDUP

Education Legislative Roundup is a compilation of bills, presented by subject, which were signed into law and have an impact on the legal issues our clients are facing. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), bills are effective on January 1, 2022, unless otherwise noted. Urgency legislation will be identified as such. Many of the bills summarized below apply directly to public education districts. Bills that do not directly apply to public education districts are presented either because they indirectly apply, may set new standards that apply or would generally be of interest to our school clients.

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

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STUDENTS

BILLS SPECIFIC TO K-12 PUPILS

AB 27/SB 400 – Requires The Reporting Of Homeless Children, Youths, And Unaccompanied Youth; Establishes Collaboration And Training Requirements For Local Educational Agencies.

The McKinney-Vento Homeless Assistance Act (the Act), provides grants to states to carry out activities relating to the education of homeless children and youths, including providing services and activities to improve the identification of homeless children and youths and to enable them to enroll in, attend, and succeed in school. The Act requires that state plans submitted to receive the grant include assurances that local educational agencies will designate an appropriate staff person to act as a local educational agency liaison for homeless children and youths. The plan must also include a description of how the state will ensure that local educational agencies and their liaisons will comply with the identification of homeless children and youths.

Under existing state law, public schools, including charter schools, and county offices of education are required to immediately enroll a homeless child or youth seeking enrollment. Existing law requires a local educational agency liaison for homeless children and youths to ensure that public notice of the educational rights of homeless children and youth is disseminated in schools within the liaison's local educational agency that provides services pursuant to the Act.

AB 27 mandates a local program and authorize $1,500,000 to be allocated to up to three county offices of education in different regions to establish technical assistance centers to foster relationships with community partners and other local educational agencies in each region.

AB 27 and SB 400 establish the following requirements:

- A local educational agency to ensure that each school within the local educational agency identifies all homeless children and youths and unaccompanied youths enrolled at the school.

- Local educational agencies receiving funding from the American Rescue Plan Elementary and Secondary School Emergency Relief – Homeless Children and Youth Fund must administer a housing questionnaire to identify homeless children and youths and unaccompanied youths, and to annually provide the housing questionnaire to all parents or guardians of pupils and unaccompanied youths of the local educational agency; the questionnaire must be provided in the parents/ guardians primary language or translated upon request; and the data collected must be reported to the department annually.

- A school district, charter school, or county office of education must create an internet web page or post on their existing webpage a list of the local educational agency liaisons for homeless children and youth and unaccompanied youths; include the liaisons' contact information; and identify the educational rights of pupils and resources available to persons experiencing homelessness.

- The State Department of Education (the Department) must develop best practices and a model housing questionnaire that must be made available on their website.

- The Department must provide training materials to assist liaisons with providing professional development to school staff providing services pursuant to the Act.

- The Department shall develop a system to verify that school staff providing services to youth experiencing homelessness are being training annually.

(AB 27 and SB 400 amend Sections 48852.5 and 48859 of the Education Code, and AB 27 adds Sections 48851, 48852.6, and 48857 to the Education Code.)

AB 101 - Incorporates One-Semester Of Ethnic Studies To High School Graduation Requirements.

Existing law requires students in grades 9-12 complete designated coursework in order to receive a high school diploma. Existing law requires the Instructional Quality Commission to develop, and the State Board of Education to adopt, modify, or revise, a model curriculum in ethnic studies. Currently, the law encourages school districts and charter schools with grades 9 12 that do not offer a standards-based ethnic studies curriculum, to offer beginning in the school year following the adoption of the model curriculum, a course of study in ethnic studies based on the model curriculum.

AB 101 adds the completion of a one-semester course in ethnic studies to the graduation requirements commencing with pupils graduating in the 2029-30 school year. This requirement also applies to pupils enrolled in charter schools. Under this law, school districts and charter schools have discretion to require pupils complete a full-year course in ethnic studies. School districts and charter schools are required to offer an ethnic studies course commencing with the 2025-26 school year. The course must offer ethnic studies content

to meet this requirement. This law allows pupils to satisfy the ethnic studies requirement by completing any of the following:

- A course based on the model curriculum in ethnic studies developed by the commission;
- An existing ethnic studies course;
- An ethnic studies course taught as part of a course that has been approved as meeting the A–G requirements of the University of California and the California State University; or
- A locally developed ethnic studies course approved by the governing board of the school district or the charter school.

(AB 101 amends Section 51225.3 of the Education Code.)

AB 104 - Requires School Districts, County Offices Of Education And Charter Schools To Implement A Retention Policy, Grade Changes, And Graduation Exemptions For Specific Pupils.

Existing law requires the governing board of a school district and a county superintendent of schools to adopt policies regarding pupil promotion and retention, and requires strict compliance with those policies. Until June 30, 2023, existing law makes certain funds available to school districts, county offices of education, charter schools, and state special schools to be used by August 31, 2022, to offer supplemental instruction and support and other similar activities.

AB 104 changes existing law and requires school districts, county offices of education and charter schools to comply with new requirements in three specific areas as following:

- Pupil Retention
  - o To implement a supplemental policy regarding the retention of pupils who received deficient grades in half of their coursework during the academic year of 2020-21 and who were in grades 9-11;
  - o To schedule a meeting with the pupil or pupil's parent/guardian/educational rights holder (hereinafter "Requesting Party") within 30 calendar days of the written retention request;
  - o During the retention meeting, discuss all available learning recovery options; consider the pupil's academic data and other relevant information; and consider pupil's individual education program.
  - o To provide the Requesting Party notice of the retention decision; and
  - o If the pupil's retention request is denied, to allow the pupil a form of credit recovery for courses the pupil received a D or F letter grade in the 2020-21 academic year.
- Pass/No Pass Grades
  - o Allow parents, guardians or education rights holder of a pupil, or a pupil who is 18 years or older and who was enrolled in a high school course during the 2020–21 school year to apply to the pupil's school district, county board of education, or charter school to change the letter grade for that course to a Pass or No Pass grade on the pupil's transcript;
  - o California State University is required to accept the grade change and private postsecondary institutions are encouraged to accept the grade change. Private postsecondary institutions are required to notify the Department of whether they will accept the change transcripts for admission purposes.
  - o The Department must develop the application for the grade change request.
- Exemption from Local Graduation Requirements
  - o Pupils in their 3rd and 4th year of high school who are not on track to graduate in 4 years in the 2020-21 or 2021-22 school year, must be given the opportunity to complete the statewide coursework required for graduation, which may include allowing the pupil a 5th year of instruction.

AB 104 was an urgency statute, which means it was effective upon approval by the governor. This bill became law on July 1, 2021. School districts, county office of education and charter schools should review your retention policies and ensure they adopted the required supplemental policy and comply with AB 104.

(AB 104 adds Sections 48071, 49066.5, and 51225 to the Education Code; this bill was an urgency bill and became effective immediately.)

AB 367 – Requires Public Schools With Grades 6 To 12 To Provide Free Menstrual Products In Their Restrooms.

Existing law requires schools that meet the 40-pecent pupil poverty threshold pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code, stock feminine products in at least 50 percent of the school's restrooms.

AB 367 makes this provision inoperative on June 30, 2022 and repeals Section 35292.6 of the Education Code effective January 1, 2023.

This bill amends existing law and enacts the Menstrual Equity for All Act of 2021. The Act requires that on or before the start of the 2022-23 school year, schools with grade levels 6 to 12 provide free menstrual products in all women's restrooms and all-gender restrooms, and at least in one men's restrooms. This requirement applies to schools, schools operated by a school district, county office of education and charter school. Schools must ensure that menstrual products are available and accessible at all times on or before the start of the 2022-23 academic year. Schools are also required to post a notice regarding the requirements of this law in every restroom required to stock menstrual products. The notice must include the email address and telephone number of the designated individual responsible for stocking the supplies.

This bill defines "menstrual products" to mean menstrual pads and tampons used in connection with a menstrual cycle.

(AB 367 amends, repeals and adds Section 35292.6, and adds Section 66027.7 to the Education Code.)

AB 469 – Exemption From Financial Aid Application By Pupil.

Existing law requires a school district, county office of education, or charter school to ensure that a grade 12 pupil who has not opted out to complete and submit a Free Application for Federal Student Aid. Alternatively, if the pupil is exempt from paying nonresident tuition under existing law, the pupil must complete and submit the California Dream Act form. Existing law requires the Student Aid Commission, on or before July 1, 2022, to adopt regulations that include, but are not limited to, model opt-out forms, and acceptable use policies to provide guidance on applicable state laws. Existing law requires the school district, county office of education, or charter school to exempt a pupil or the pupil's parent or legal guardian from completing a form if the local educational agency determines the pupil is unable to complete the form. Existing law prohibits a pupil's ability to graduate from being affected by a pupil's failure to fill out a form.

This bill requires that on or before September 1, 2022, and every year after that, the commission and the State Department of Education facilitate the completion of the Free Application for Federal Student Aid and the California Dream Act form, by requiring the department to share the current school year's roster of pupils with the Commission. The Commission is required to match data on pupil completion of financial aid forms.

(AB 469 amends Section 51225.7 of the Education Code.)

AB 516 – Requires Pupil Attendance At Cultural Ceremonies And Events To Be An Excused Absences.

Existing law requires that each person between 6 and 18 years of age to attend full-time education unless exempted. The law currently allows pupils absent from school to be excused for specific reasons, including pupil illness.

This bill amends existing law to excuse pupil absences for an absence that is to participate in a cultural ceremony or event. The bill defines "cultural" to mean relating to the habits, practices, beliefs, and traditions of a certain group of people.

(AB 516 amends Section 48205 of the Education Code to expand the definition of excused absences. This bill is only operative if SB 14 is passed, and here it was.)

AB 599 – Revises The Duties Of The County Superintendent Of Schools To Increase Accountability.

Existing law requires county superintendents to maintain responsibility for the fiscal oversight of each school district in their county, and to visit and examine each school in their county at reasonable intervals to observe its operation and learn of its problems.

This bill revises the duties of the county superintendent. It requires the Superintendent of Public Instruction to identify a list of schools for the 2021-22 and 2022-23 fiscal years that require comprehensive support and improvement. This bill also requires that the list include schools where 15% or more of the teachers are holder of a permit, certificate, or any other authorization that is a lesser certificate than a preliminary or clear California teaching credential. The bill requires the Superintendent to create this list at least every three fiscal years following the 2022-23 fiscal year. Under this new law, the county superintendent is required to inspect the schools on the list and within their county annually and to submit a report describing the state of the school.

(AB 599 amends Section 1240 of the Education Code.)

AB 824 – Requires A County Board Of Education Or The Governing Body Of A Charter School That Operates One Or More High Schools To Appoint Pupil Board Members After Receiving A Pupil Petition Signed By A Sufficient Number Of Students, A Requirement That Already Applies To School Districts.

Current law requires the governing board of a school district to include a student board member if a petition signed by a specified number of high school students is brought before the governing board. Current law does

not provide for a process to add student board members to a county board of education or the governing body of a charter school. AB 824 addresses that disparity between school districts, and charter schools and county boards of education.

Accordingly, AB 824 provides if a pupil petition signed by at least 500 enrolled high school students or 10 percent of enrolled high school students, whichever is less, is submitted to a county board of education or charter school requesting a pupil seat on the governing board, the county board of education or charter school or entity managing the charter school must add a pupil seat to the board. Individual students elected to serve in the pupil seat, must be enrolled at a high school within the county board of education's or charter school's jurisdiction. Pupils must be chosen to serve one-year terms by the pupil's high school students enrolled with the county board of education or attending the charter school, according to the policies and procedures adopted by the county board of education or charter school. These requirements mirror the same requirements applicable to school districts.

Similarly, AB 824 affords similar rights and limitations to the pupil board member. For example, the pupil member may only have preferential voting rights, which means the pupil has a right to make a public vote that must be recorded in the minutes. But the vote does not count for the purposes of passing any measure. As another example, the pupil has the right to attend meetings, except closed sessions, and to receive all materials provided to board members, except closed session materials. Pupil members do not count as members of a legislative body or a local agency for the purposes of the Brown Act.

(AB 824 amends Sections 1000 and 35012 of the Education Code, and adds Section 47604.2 to the Education Code.)

AB 945 – Establishes A Task Force To Develop Recommendations For Traditional Tribal Regalia And Recognized Objects Of Religious Or Cultural Significance Worn By Students At School Graduation Ceremonies.

Existing law, Education Code Section 35183.1, authorizes pupils to wear traditional tribal regalia or recognized objects of religious or cultural significance as an adornment at school graduation ceremonies. An "adornment" means something attached to, or worn with, but not replacing, the cap and gown customarily worn at school graduation ceremonies. However, school districts, county offices of education, and charter schools have the discretion and authority to prohibit an item that is likely to cause a substantial disruption of, or material interference with, the ceremony.

AB 945 establishes a ten-member Task Force to Study and Develop Best Practices to Protect Pupil Rights to Wear Traditional Tribal Regalia or Recognized Objects of Religious or Cultural Significance as an Adornment at School Graduation Ceremonies (Task Force) convened by the State Department of Education. The Task Force will gather information and develop recommendations for best practices, protocols, proposed legislation, and other policies to address how to comprehensively implement Section 35183.1 and the wearing of traditional tribal regalia or recognized objects of religious or cultural significance as an adornment by pupils at school graduation ceremonies. AB 945 requires the Task Force to submit, on or before April 1, 2023, a report to the Legislature that includes its findings and policy recommendations to promote full implementation of Section 35183.1. The provisions added by AB 945 are repealed as of January 1, 2024.

(AB 945 adds and repeals Section 35183.2 of the Education Code.)

AB 643 - Requires Schools And School Districts To Provide Notice To Apprenticeship Programs Within Their County Of A Career Or College Fair.

This bill establishes notice requirements for school districts and schools hosting career or college fairs. The bill requires that a school or school district planning to host a career or college fair provide notice to the apprenticeship programs within the schools' or school district's county. The bill defines "career fair" as an event where multiple private businesses, government agencies, university representatives, or career technical school representatives are invited by to present career options or career technical education options for pupils. The bill defines "college fair" as an event where multiple college or university representatives are invited to present college options to pupils. The bill applies to public schools, charter schools, and alternative schools. The notice must identify the date and location of the fair and must be delivered by first class mail or electronic mail prior to the date of the fair.

(AB 643 adds Section 3074.2 to the Labor Code.)

AB 1055 – Deletes Specific Requirements That Had To Be Met Before A Dependent Tribal Child Was Considered Foster Youth For Purposes Of The Local Control Funding Formula.

Existing law defines "foster youth" for the purposes of a local control funding formula to include a dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of the petition filed in the tribal court in accordance with tribal law, but only if the child also met state law standards of when a child is considered a dependent child of a juvenile court.

This bill eliminates the state standard requirement for purposes of defining foster youth. The definition of foster youth is expanded to include a child who is the subject of a voluntary placement agreement.

(AB 1055 amends Sections 42238.01, 48850, 48853.5, 49069.5, 49085, and 51225.2 of the Education Code.)

SB 14 – Expands The Definition Of Excused Absence By Expanding Illness To Include Mental And Behavior Health.

Current law requires that each person between the ages of 6 and 18 attend school. Pupils absent from school may be excused for certain absences including illness.

This bill amends the definition of an absence due to the pupil's illness to include absences for the benefit of the pupil's mental or behavior health. The State Board of Education is required to update its illness verification regulations to account for a pupil's absence for the benefit of the pupil's mental or behavior health.

The State Department of Education is also required to recommend best practices for identifying evidence-based and evidence-informed staff and pupil training. Training in compliance with SB 14 must begin on or before January 1, 2023.

(SB 14 incorporates additional changes to Section 48205 of the Education Code proposed in AB 516. This bill is only operative if AB 516 is also passed, here both bills were passed.)

SB 97 – Requires Schools Provide Parents/Guardians With Written Notification Of Information Regarding Type 1 Diabetes By January 1, 2023, At The Time Pupils Are First Enrolled In Elementary School.

Existing law requires school districts provide parents/guardians with information sheets regarding type 2 diabetes to all incoming pupils in grade 7. The State Department of Education (the Department) is required to prepare the required information sheet and make it available to school districts.

This bill extends existing law by requiring the Department develop an information material regarding Type 1 diabetes. The Department is required to make the material available on their website for school districts, county offices of education, and charter schools to access. Each school district, county office of education, and charter school is required to provide written notice of the available material by January 1, 2023. Notice must be provided to the pupil's parent or guardian when the pupil is first enrolled in elementary school. The bill allows including information regarding Type 1 diabetes with the information provided pursuant to section 48980 of the Education Code.

(SB 97 adds Section 49452.6 to the Education Code.)

SB 224 – Requires Pupil Instruction To Include Education Regarding Mental Health.

The bill requires that each school district, county office of education, state special school, and charter school offer one or more courses in health education to pupils in middle school or high school.

(SB 224 adds Article 6 to Chapter 5.5 of Part 28 of Division 4 of the Title 2 of the Education Code.)

SB 254 – Establishes September 11 As Remembrance Day For Public Schools.

Existing law identifies days each year as having special significance.

This bill encourages all public schools and educational institutions to observe September 11 as Remembrance Day. It further requires that when September 11 falls on a school day, public elementary and secondary schools observe a moment of silence at the appropriate time while school is in session.

(SB 254 adds Article 6 or Chapter 5.5 of Part 28 of Division of Title 2 of the Educational Code.)

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.)

SB 722 – Establishes New CPR Requirements For School Districts And Charter Schools Sponsoring Or Hosting Swimming Pool Events That Are Not A Part Of An Interscholastic Athletic Program.

This bill amends existing law and establishes new requirements for school districts and charter schools who choose to sponsor or host an on-campus event in or around a swimming pool.

This bill requires that at least one adult with a valid certification of cardiopulmonary resuscitation training be present during the entire event. This requirement does not apply to an interscholastic athletic program.

(SB 722 amends Section 35179.6 of the Education Code.)

BILLS SPECIFIC TO COLLEGE STUDENTS

AB 245 - Requires Public Postsecondary Institutions To Change Student Records To Reflect Changes To Student Name And Gender Changes.

The Donahoe Higher Education Act establishes the California Community Colleges, the University of California, and the California State University (collectively "institution"), as the three segments of public postsecondary education in the state of California. Under this bill, an institution is required to update a former student's records to include the student's updated legal name or gender, if the institution receives government-issued documentation from the student supporting the name or gender change. The institution is also required to reissue any record that the student requests be reissued.

This bill further requires that starting with the 2023-24 graduating class, the intuition must provide graduating students with the option to specify list the name the student wants on the diploma. The institution cannot require students provide legal documentation to support the chosen name or gender change.

(AB 245 adds Section 66271.4 to the Education Code.)

AB 251 - Restrictions To Public Postsecondary Education Admissions by Exception.

Existing law prohibits a campus of the California State University and the University of California, if adopted by appropriate resolution, from admitting an applicant by admission by exception unless the admission by exception has been approved before the student's enrollment, is supported by at least three senior campus administrators, the applicant is a California resident who is receiving an institution-based scholarship or the applicant is accepted by an educational opportunity program for campus admission.

This bill restricts existing law by prohibiting a senior campus administrator from being associated with campus development, external affairs, fundraising, donor relations, alumni relations, or alumni outreach.

(AB 251 amends Section 66022.5 of the Education Code.)

AB 337 – Allows Students Appointed To The Board Of Governors The Right To Vote During The First Year Of Their Term.

Existing law appoints two community college students to serve on the Board of Governors of the California Community Colleges. Existing law does not allow a student board member to vote during the first year of their two-year term.

This bill eliminates the one-year probation and provides student board members the right to vote during their entire term on the board.

(AB 337 amends Section 71000 of the Educational Code.)

AB 340 - Expands The Expenses Covered By The Golden State Scholarshare College Savings Trust To Include Registered Apprenticeship Program.

Under existing law, the Golden State Scholarship Trust Act establishes the Golden State Scholarshare College Savings Trust, to provide financial aid for postsecondary education costs of participating students. Existing law defines "qualified higher education expenses" as the expenses to attend an institution of higher education. This bill amends the definition to include expenses associated with participation in a registered apprenticeship program and payments on the principal or interest of a qualified education loan.

(AB 340 amends Section 69980 of the Education Code, and amends Sections 17140 and 17140.3 of the Revenue and Taxation Code and adds Section 17201.7 to the Revenue and Taxation Code.)

AB 417 – Authorizes The Chancellor Of The California Community Colleges To Establish The Rising Scholar Network In Support Of Postsecondary Education Programs For Justice Involved Students.

This bill authorizes the Chancellor of the California Community Colleges to establish the Rising Scholar Network program. The Chancellor may enter into agreements with up to 50 community colleges to provide additional funds for services in support of justice-involved students. Community college districts interested in participating in the Rising Scholar Network are required to apply to the board of governors for funding. The bill requires the board of governors to adopt regulations for the Rising Scholar Network that fulfill the following goals and guidance of program:

- To designate a staff program director, coordinator, or liaison who has experience working with currently or formerly incarcerated students;
- To be supported with a dedicated campus meeting space;
- To build support and competency from a broad range of college stakeholders;
- To offer and make accessible a range of student supports to address academic and nonacademic needs;
- To foster peer mentors;
- To develop and maintain strong relationships with external partners, including community-based programs, probation, parole, and county jails;
- To provide or connect justice-involved students with direct student financial support for critical needs;
- To conduct outreach and respond to prospective justice-involved students, particularly those in jail or prison; and
- To help justice-involved students apply, matriculate, and persist to graduation.

The board of governors is required to submit a report to the Department of Finance on or before December 31, 2023 and every two years thereafter.

(AB 417 adds Article 6 (commencing with Section 78070) to Chapter 1 of Part 48 of Division 7 of Title 3 of the Education Code.)

AB 576 – Extends The Waiver Of Open-Course Provisions For Military Personnel.

Existing law waives open-course provisions in statute or regulations of the board of governors for any governing board of a community college district for classes the district provides to inmates of certain facilities, and authorizes the board of governors to include the units of full-time equivalent students generated in those classes for purposes of state apportionments.

This bill extends the waiver to courses the district provides to military personnel, their dependents, and authorized civilian employees on a military base. However, the bill does not allow the community college district to claim state apportionment for any class the district receives full compensation for the direct education costs of the course regardless of whether it is paid by a public or private agency, individual, or group of individuals or pursuant to a contract or instructional agreement.

(AB 576 adds Section 84811 to the Education Code.)

AB 927 – Extends The Offering Of Baccalaureate Degree Programs At Community Colleges Indefinitely.

Existing law authorizes the board of governors to approve pilot baccalaureate degree programs statewide in consultation with the California State University and the University of California until July 1, 2026. The maximum number of pilot programs was limited to 15 community college districts. To apply, the governing board of a community college districts had to submit certain items for review by the Chancellor and be approval by the board of governors. The requirements including documentation of unmet workforce needs specifically related to the proposed pilot program.

This bill extends the operation of the baccalaureate degree programs indefinitely. It increases the number of baccalaureate degree programs that can be approved by the Chancellor to 30 per academic year. However, the total number of baccalaureate degrees programs offered by the community college district cannot exceed 25% of the total number of associate degree programs. To establish the need of the program, the community college district must provide documentation of the unmet workforce need by including:

- Evidence that the district consulted with regional employers and workforce development board;
- Statewide and regional workforce data relevant to the proposed baccalaureate degree program; and
- Evidence that the program will help address unmet workforce needs by providing evidence that employers are having difficulty filling positions

that require a baccalaureate degree; employers are willing to pay baccalaureate degree holders more than those holding an associate degree or no postsecondary degree; and employers have a preference for candidates with the proposed baccalaureate degree.

The bill also requires that a minimum of 30 working days be taken to validate the information submitted and assess the workforce value of the proposed program.

(AB 927 amends Sections 78040, 78041, and 78042, and repeals and adds Section 78043 of the Education Code.)

AB 1111 – Requires The Community Colleges Establish A Common Course Numbering System For All Required Courses For General Education And Transfer Pathways, And Requires Each Campus To Adopt The Common Course Numbering To Their Course Catalog By No Later Than July 1, 2024.

Existing law required the California Community Colleges and the California State University adopt a common course numbering system for the 20 highest-demand majors no later than June 1, 2006, and authorized the University of California and private postsecondary institutions to do the same. Existing law also requires that no later than June 30, 2006, the Board of Governors of the California Community Colleges and the Trustees of the California State University to report to the Legislature, and requests the Regents of the University of California to report to the Legislature, on the status and plans to implement a common course numbering system for the majors that are not the 20 highest demand majors.

By July 1, 2024, the California Community Colleges adopt a common course numbering system for all required general education courses and transfer pathway courses. The bill requires each community college campus incorporate the common course numbering system into its course catalog no later than July 1, 2024. In developing the common course numbering system, the bill requires the system be student facing and must ensure comparable courses across all community colleges have the same course number.

(AB 1111 adds Section 66725.5 to the Education Code.)

AB 1113 – Exempts Qualifying Survivors Of Persons Providing Medical Or Emergency Services Deceased During The COVID-19 State Of Emergency From Paying Mandatory Tuition And Fees.

This bill prohibits the Board of Governors of the California Community Colleges, the Trustees of the California State University, the Board of Directors of the Hasting College of Law, and, the Regents of the University of California from collecting mandatory fees or tuition or mandatory campus-based fees of any kind from a surviving spouse or child of a licensed physician, licensed nurse, or first responder who died during the COVID-19 pandemic.

To qualify for a waiver as a surviving spouse or child, they must be enrolled as a student of a community college or undergraduate student of California State University or University of California; provide documentation showing the student's annual income does not exceed the limits established by the Cal Grant A award; and the surviving spouse or child was a resident of the California during the COVID-19 pandemic state of emergency. Further, the deceased must have been employed by or under contract with a health facility regulated and licensed by the State Department of Public Health to provide medical services or a first responder. The deceased person's principal duties consisted of providing medical services or emergency services during the COVID-19 pandemic state of emergency.

Each of the institutions that has an internet website must provide an online posting or notice of systemwide or tuition waivers available to students. The posting or notice must the following requirements:

- Shall be accessible through a prominent direct link to an application for a waiver;
- The direct link shall appear on the primary web page of the financial aid section of the campus website; and
- The link shall provide a description of the systemwide fee or tuition waiver to clearly individuate the type of student who would potentially be eligible to apply.

(AB 1113 amends Sections 68120.7 and 76300 and adds Section 68120.3 to the Education Code.)

AB 1326 – Requires The County Human Services To Designate A Liaison To Serve As A Point Person For College Personnel.

This bill requires the county human services agency to designate at least one employee as a staff liaison to serve as a point of contact for academic counselors and other professional staff of a public institution of higher education located within the county. The California Community Colleges Chancellor's Office and of the California State University are required to collaborate with the county human resources agencies to conduct a survey to determine the effectiveness of the liaison. The bill also requests that the Office of the President of the University of California also collaborates in

the development of the survey and evaluation of the effectiveness of the liaison. This bill repeals Section 66027.9 of the Education Code on January 1, 2026.

(AB 1326 adds and repeals Section 66027.9 of the Education Code and adds Section 10006 to the Welfare and Institutions Code.)

AB 1407 – Changes Existing Graduation Requirements For Nursing Programs To Require Nursing Students Complete One Hour Of Implicit Bias Training.

The Board of Registered Nursing (the Board) is responsible for establishing the requirements to approve a nursing school and nursing program.

This bill expands current law by requiring approved nursing schools and nursing programs to require students complete a one-hour training of implicit bias as a graduation requirement. The training must consist of direct participation. The bill prohibits this new graduation requirement from being construed to require a curriculum revision or to affect the licensing or endorsement requirements established by the Nursing Practice Act.

Starting January 1, 2023, the bill requires licensees who are within the first two years of receiving their license to complete a one-hour training of direct participation in implicit bias through a Board approved continuing education provider.

The one-hour training must include the following subject matters to satisfy this requirement:

- Identification of previous or current unconscious biases and misinformation;
- Identification of personal, interpersonal, institutional, structural, and cultural barriers to inclusion;
- Corrective measures to decrease implicit bias at the interpersonal and institutional levels, including ongoing policies and practices for that purpose;
- Information on the effects, including, but not limited to, ongoing personal effects, of historical and contemporary exclusion and oppression of minority communities;
- Information about cultural identity across racial or ethnic groups;
- Information about communicating more effectively across identities, including racial, ethnic, religious, and gender identities;
- Discussion on power dynamics and organizational decisionmaking;
- Discussion on health inequities within the perinatal care field, including information on how implicit bias impacts maternal and infant health outcomes;
- Perspectives of diverse, local constituency groups and experts on particular racial, identity, cultural, and provider-community relations issues in the community; and
- Information on reproductive justice.

(AB 1407 amends Sections 2786 and 2811.5 of the Business and Professions Code.)

SB 26 – Enacts The Fair Pay To Play Act Effective September 1, 2021 Regulating Contracts Compensating Student Athletes For The Use Of Their Name, Image, Likeness, And Athletic Reputation; And Changes Existing Law To Also Prohibit Community Colleges From Providing Prospective Athletes With Compensation.

Existing law does not allow postsecondary educational institutions in the state of California, except for community colleges, to compensate prospective student athletes for the use of the student athlete's name, image, or likeness, nor can student athletes obtain professional representation relating to their participation in intercollegiate athletics. Existing law prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing postsecondary educational institutions other than a community college from participating in intercollegiate athletics as a result of student athlete's earning compensation. Existing law does not allow a student's scholarship to be revoked because they earn compensation or obtain legal representation. Existing law does not allow a student athlete to enter into a contract that conflicts with the team's contract. Existing law also prohibits a team contract from preventing an athlete from using their athletic reputation for a commercial purposes when the athlete is not engaged in official team activities. Existing law makes these provisions operative on January 1, 2023.

This bill enacts the Fair Pay to Play Act (the Act) and makes the provisions of the Act effective September 1, 2021. The Act amends existing law to apply to community colleges. The Act applies to all campuses of the California Community Colleges, the University of California, the California State University, independent institutions of higher education, and to a private postsecondary education institution.

The Act establishes the following:

- A postsecondary educational institution cannot prevent their student athletes from earning compensation as a result of the use of the student's name, image, likeness, or athletic reputation;
- The student athlete's scholarship eligibility cannot be affected by the compensation earned;
- An athletic association, conference, or other group or organization with authority over intercollegiate athletics cannot prevent a student from participating in intercollegiate athletics because the student is earning compensation from their name, likeness, or athletic reputation;
- A postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics cannot compensate prospective student athletes for the athlete's name, image, likeness, or athletic reputation;
- Athletic students cannot be prevented from obtaining professional representation in contracts or legal matters, including representation provided by athlete agents or attorneys, but representation can only be obtained from professionals licensed in California;
- A scholarship that pays for the students cost of attendance at the postsecondary institution is not compensation pursuant to this Act;
- Student athletes who enter into contracts for compensation for the use of their name, image, likeness or athletic reputation must disclose the contract to the designated official of the postsecondary institution;
- Student athletes cannot enter into contracts for the use of their name, image, likeness, or athletic reputation if a provision of the contract is in conflict with a provision of the team's contract;
- The postsecondary institution asserting a conflict with the student's contract is required to identify the provision in conflict to the athlete or athlete's legal representatives; and
- A team's contract cannot prevent a student athlete from using their name, image, likeness, or athletic reputation for a commercial purpose when the athlete is not engaged in official team activities.

(SB 26 amends Section 67456 of the Education Code.)

SB 330 – Establishes The Los Angeles Community College District Affordable Housing Pilot Program.

This bill requires the governing board of the Los Angeles Community College District (the District) to develop and implement a pilot program to provide affordable housing to students or employees of the District. The bill requires the District prepare a report with findings and recommendation on the success of the program to the Legislature by January 1, 2032.

The District must develop and implement a pilot program to provide affordable housing to students and employees. This bill allows the District engage in the following:

- Priority to the affordable housing shall be given to low-income students experiencing homelessness.
- The District may lease any real property it owns to a nonprofit entity, private person, firm or corporation, so long as the lessee is required to construct or provide for the construction of buildings for the joint use by the parties and during the term of the lease, each party retains sole control of their occupied buildings and the District does not pay any rental fee or charges for the use of the buildings.
- The parties may agree to waive the condition that the District pay no rental fee or charge for the portion of the buildings the District occupies, if any buildings constructed pursuant to a lease or agreement is developed and operated by the District as affordable housing for students or employees of the District;
- The District may enter into a lease or agreement for joint occupancy, so long as the real property and buildings are intended for affordable housing for students or employees, or both, of the District;
- The District may not enter into a lease for a period longer than 66 years.
- The District may lease real property for less than fair rental value to any entity, so long as the lease or agreement is for joint occupancy and the real property will be developed and operated for affordable housing for District students or employee, or both, and the lease or agreement complies with Section 6 of Article XVI of the California Constitution.

The provisions enacted by this bill remain in effect until January 1, 2033.

(SB 330 adds and repeals Article 17 (commencing with Section 81560) of Chapter 2 of Part 49 of Division 7 of Title 3 of the Education Code.)

SB 436 – Permanently Exempts Qualifying Students In Certain Nevada Communities From Paying The Nonresident Tuition Fee To Attend Lake Tahoe Community College.

Existing law allows community college districts to admit nonresident students and requires these students pay a nonresident fee. Currently, the law exempts from the nonresident tuition fee students who attend Lake Tahoe Community College and who have residence in one of several designated community in Nevada, until July 1, 2022.

This bill amends current law by permanently exempting qualifying students in designated Nevada communities from the nonresident tuition fee to attend Lake Tahoe Community College.

(SB 436 amends and repeals Section 76140 of the Education Code.)

SB 512 – Extends Priority Enrollment To Foster Youth Or Former Foster Youth In Postsecondary Institutions Whose Dependency Was Established Or Continued On Or After The Youth's 13th Birthday.

Existing law requires the California State University and each community college district that administers a priority enrollment system at their respective campuses to grant priority to certain foster youth or former foster youth whose dependency was established or continued by the court on or after the youth's 16th birthday. Existing law requires priority be granted to certain homeless youth and former homeless youth. Existing law also requests that the University of California provide the same enrollment priority to these groups of youth.

This bill extends this requirement and request to apply to certain foster youth or former foster youth whose dependency was established or continued on or after the youth's 13th birthday and to certain homeless youth and former homeless youth. The bill amends existing law to authorize a representative of a tribe or tribal organization to verify the homeless status of an American Indian student who is a homeless youth or former homeless youth.

Existing law authorizes the California Community Colleges Chancellor's Office to enter into agreements with up to 20 community colleges to provide additional funds for services in support of postsecondary education for foster youth. This bill adds a provision to Section 79220 of the Education Code allowing for additional funding to support existing Cooperating Agencies Foster Youth Educational Support programs to provide services to students enrolled in courses, but who have not yet begun the term. The additional funding must support services necessary to enable the student to be successful at the start of their academic term.

(SB 512 amends Sections 66025.9, 79220, 79222, and 79225 of the Education Code.)

SB 701 – Modifies Existing Definitions And Requirements Related To The Payment Of Nonresident Tuition By Nonresident Students.

Students enrolled at community college campuses or at a California State University are exempt from paying nonresident tuition or any other fee exclusively applicable to nonresident students if the student resides in California, meets the definition of "covered individual under federal law or receives education benefits under a GI Bill. Federal law required the expiration of a student's classification as a "covered individual" to expire after receiving benefits for a period of three years. However, the expiration of the three-year period did not impact the student's classification at a campus so long as the student continued to take course. On January 5, 2021, federal law was enacting eliminating the three-year period expiration requirement. To conform to federal law, SB 701 removes the language related to the expiration of the three-year period.

The law was also revise to exempt exempts qualifying students from paying nonresident tuition fees for the academic term beginning on or after August 1, 2021.

The bill eliminates the requirement in Section 89705 of the Education Code that a nonresident student has to be a noncitizen of the United States to qualify for a waiver, reduction, or fixed rate of the tuition fee applicable to a nonresident student.

This bill also amends section 89707 of the Education Code by reducing the course load that a nonresident student or nonresident graduate student must be enrolled in to qualify for a reduced fee at a California State University.

(SB 701 amends Sections 68075.7, 89705, 89706, and 89707 of the Education Code.)

BILL IMPACTING BOTH K-12 & COLLEGE STUDENTS

AB 367 – Requires Public Schools With Grades 6 To 12, Community Colleges Districts, And California State University To Provide Free Menstrual Products In Their Restrooms.

Existing law requires schools that meet the 40-pecent pupil poverty threshold pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code, stock feminine products in at least 50 percent of the school's restrooms. AB 367 makes this provision inoperative on June 30, 2022 and repeals Section 35292.6 of the Education Code effective January 1, 2023.

This bill amends existing law and enacts the Menstrual Equity for All Act of 2021. The Act requires that on or before the start of the 2022-23 school year, schools with grade levels 6 to 12 provide free menstrual products in all women's restrooms and all-gender restrooms, and at least in one men's restrooms. This requirement applies to schools, schools operated by a school district, county office of education and charter school. Schools must ensure that menstrual products are available and accessible at all times on or before the start of the 2022-23 academic year. Schools are also required to post a notice regarding the requirements of this law in every restroom required to stock menstrual products. The notice must include the email address and telephone number of the designated individual responsible for stocking the supplies.

AB 367 also applies to community college districts and to the California State University. These institutions are required to stock an adequate supply of menstrual products at least one designated and accessible central location on each campus. In determining whether the a location is accessible, the institution should consider the hours of operation, relative to the hours students are on campus; proximity to high traffic areas on campus; privacy; and safety. In considering privacy, the institution should consider whether access to the products would require interactions with staff or other students. A notice must also be posted in a prominent and conspicuous location in all women's restrooms, all-gender restrooms, and in at least one men's restroom identifying that menstrual products are available free and where they can be found.

This bill defines "menstrual products" to mean menstrual pads and tampons used in connection with a menstrual cycle.

The Regents of the University of California, independent institutions of higher education, and private postsecondary educational institutions are encouraged to also supply menstrual products free at a central location on each campus.

(AB 367 amends, repeals and adds Section 35292.6, and adds Section 66027.7 to the Education Code.)

EMPLOYMENT

CLASSIFIED EMPLOYEES

AB 275 – Probationary Period For Classified Community College Employees Shortened.

Under existing law, the governing board of a community college district is required to establish written rules and regulations governing the personnel management of classified service, whereby classified employees are designated permanent employees after serving a specified period not to exceed one year. This bill changes the law and provides for a shorter probationary period.

AB 275 shortens the maximum length of a classified employee's probationary period at a community college district to 6 months or 130 days of paid service, whichever is longer. This shortened probationary period does not apply to full-time peace officers or public safety dispatchers employed by a community college district operating a dispatch center certified by the Commission on Peace Officer Standards and Trainings. Peace officers and public safety dispatchers must complete a probationary period of no less than one year from their date of appointment to that full-time position. However, the changes to the law do not apply to a conflicting collective bargaining agreement entered into before January 1, 2022, until the collective bargaining agreement expires or is renewed.

(AB 275 amends Sections 88013 and 88120 of the Educational Code.)

AB 289 – Adoption And Termination Of Classified School Employees Merit System.

Existing law authorizes both the adoption and termination of a merits system in a school district or community college district by a majority vote of its classified employees or by a majority of the voting electors of the school district or community college district. Under existing law, following the filing of a petition for adoption or for the termination of a merit system, the governing board of the district is required to perform specified activities, including but

not limited to, formulating the identification system to protect against fraud in the balloting process, and forming a tabulation committee.

This bill amends existing law to require the revised identification system to also ensure ballot secrecy and prohibits a representative of the district from marking the ballot envelope or ballot of any employee, except the bill allows the tabulation committee to adopt a system of uniformly stamping all ballots received or all ballots counted, to help ensure an accurate count. The system can require the stamping be consistent.

AB 289 requires that at least one member of the tabulation committee be a classified member. The classified member shall be designated by the largest exclusive representative of classified employees within the district.

Further, if a district communicates with classified employees opposing the adoption of a merit system or in favor of terminating that system, the district must provide at least equal time and equal access to any exclusive representative of classified employees within the district to communicate its position on adopting or terminating that system. Finally, the bill requires that all election procedures not specified for in the bill be within the scope of representation pursuant to the Educational Employment Relations Act.

(AB 289 amends Sections 45221, 45319, 88051, and 88138 of the Education Code.)

AB 438 – Provides Classified Employees With The Same Layoff Notice And Hearing Rights As Certificated And Academic Employees.

The bill requires school districts and community districts to provide classified employees with the same layoff notice and hearing rights as certificated and academic employees have. It also provides that any layoff notice or hearing rights granted to certificated and academic employees in the future would automatically extend to classified employees.

The bill defines "permanent classified employees" as an employee who was permanent at the time the notice or right to a hearing was required and an employee who became permanent after the date of the required notice. This bill does not change a district's right to release probationary employees.

Districts will now be required to issue permanent classified employees with notice of a layoff no later than March 15. Except when the district eliminated the classified positions because of the expiration of a specially funded or grant program, it must give the layoff notice at least 60 days prior to the effective date of the layoff. This notice shall notify employees of their layoff date, displacement rights if any, and reemployment rights.

With the passage of AB 438, districts will be required to:

- Before March 15th, the CEO must recommend the governing board issue layoff notices to classified employees;
- Provide layoff notices to classified employees no later than March 15;
- Identify the reasons for the layoff to both the governing board and to the classified employees;
- Keep the layoff notice and the reason for the layoff confidential until the classified employee has requested a hearing or has waived their right to a hearing, except as necessary in the performance of duties; and
- Provide affected employees a layoff notice setting out the employee's right to request a hearing in writing; the allotted time to submit the hearing request; and waiver of hearing rights if the employee fails to request a hearing or to timely request a hearing.

Districts cannot lay off classified employees if there are short-term employees retained to render a service that the classified employee is qualified to render.

Additionally, AB 438 provides specific requirements for the hearing. The ALJ will conduct the hearing and issue a decision made in accordance with the Administrative Procedures Act. AB 438 further requires:

- The ALJ shall prepare a proposed decision containing findings of fact and a determination as to whether the charges sustained by the evidence and relate to the welfare of the district and its students. This decision is not binding on the governing board.
- The ALJ's proposed decision shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition.
- The district's governing board will make the final determination as to the sufficiency of the cause and disposition.
- None of the ALJ's findings, recommendations, or determinations contained is binding on the district's governing board.

- The Office of Administrative Hearings will send copies of the proposed decision to the district's governing board and to the classified employee on or before May 7.
- The district pays all expenses of the hearing, including the cost of the ALJ.
- Any notice or request must be delivered personally or by registered mail to the employee's last known address.
- The district's governing board must accept, reject, or modify the proposed decision at a meeting before May 15.
- The district must give notice of termination to the employee before May 15.
- If a continuance was granted during the hearing process, the deadlines shall be extended for the number of days of that continuance.

Districts will need to ensure they carefully plan and track deadlines. If a district does not give notice by the deadlines, the employee will automatically be reemployed for the ensuing year.

For K through 12 districts, if local control funding formula apportionment per unit of average daily attendance for the fiscal year of that Budget Act does not increase by at least 2 percent, the governing board may determine to decrease the number of classified employees of the school district due to lack of work or lack of funds. In that instance, the district governing board may issue a layoff notice, and adopt a schedule of notice and hearing for that layoff.

ACADEMIC EMPLOYEES

AB 1383 – Clarifies The Amount Of Time Permitted To Conduct An Investigation Into Allegations Of Misconduct When An Academic Employee Is Placed On Involuntary Paid Administrative Leave.

Under existing law, an academic employee is entitled to written notice before being placed on an involuntary paid administrative leave related to allegations of misconduct unless an exemption applies. The notice must be provided at least two business days before the employee is placed on leave. The written notice must identify the general nature of the accusations related to the proposed involuntary paid leave. Existing law provides that the community college should complete its investigation within 90 days of placing the employee on involuntary paid administrative leave.

Ab 1383 clarifies that the 90-day period is a 90-working-day period. The bill defines "working days" to mean Monday through Friday and excludes weekends and state holidays.

The bill adds a provision allowing for the extension of the paid administrative leave by mutual agreement not to exceed 30 calendar days.

(AB 1383 amends Section 87623 of the Education Code.)

CERTIFICATED EMPLOYEES

AB 815 – Revises The Current Credentialing Requirements For School Nurses.

Existing law requires the Commission on Teacher Credentialing to establish standards for the issuance and renewal of credentials, certificates, and permits. Current law establishes the minimum requirements for a service credential with a specialization in health for a school nurse. Existing requirements include a baccalaureate or higher degree from an accredited institution for a preliminary credential and, for a professional credential, an additional year of coursework beyond a baccalaureate degree in a program approved by the commission.

This bill revises the requirement that the baccalaureate or higher degree be from an accredited institution and will now require that it be from a regionally accredited institution of higher education. The bill adds a provision to Section 44267.5 of the Education Code allowing the commission to approve a program offered by a local educational agency, which had 40,000 or more pupils enrolled during the 2019-20 school year, for one year of coursework beyond the baccalaureate degree.

(AB 815 amends Section 44267.5 of the Education Code.)

LABOR RELATIONS

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 (PERB), subject to PERB's normal procedures.

RETIREMENT BENEFITS

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 294 – Removes 12-Year Limit On Service Credit For Elected Union Officer Leave.

Under current law, school districts and community college districts are required to grant any certified and classified employees, upon request, a leave of absence without loss of pay to serve as an elected officer of their local employee organization, or the statewide or national organization the local union is affiliated with. Under this law, the applicable union is required to reimburse the employer for the compensation paid during the leave. In addition, both the Public Employees' Retirement System (PERS) and the State Teachers' Retirement System (STRS) allow members to accrue up to 12 years of retirement service credit during this leave of absence.

SB 294 removes the 12-year limitation. The bill expressly applies retroactively to service as an elected union officer occurring after August 31, 1978, if the employee makes a written request to the employer and the union pays for all required member and employer contributions, with interest.

(SB 294 amends Sections 22711, 44987, 45210, 87768.5, and 88210 of the Education Code, and amends Section 20906 of 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 reduce and 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 are discussed below. The bill also makes stylistic and non-substantive changes.

CalSTRS

Under existing law, CalSTRS may accept a digital signature on an application for the Defined Benefit Program, but the same provision does not apply to the applicable to the Cash Balance Benefit Program or the Medicare Premium Payment Program. SB 634 clarifies that CalSTRS may accept digital signatures on forms in all three programs.

Existing law allows STRS members to purchase service credit prior to membership for various forms of prior employment that was excluded at the time of service, including service on a part-time or substitute basis, adult education service, and service as a school nurse. SB 634 clarifies that members cannot purchase service credit prior to membership for any given school year if the purchase would result in more than one year of service for that school year.

SB 634 also clarifies that if a member wishes to change or cancel their retirement application, they must return the total gross distribution amount of all payments for any canceled benefits.

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.

'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.)

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 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.

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 parent-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.

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, the 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 the 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 the 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 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.

5. In addition, if a covered small employer does not receive the required mediation notification due to the employee's failure to contact the 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.)

HARASSMENT, DISCRIMINATION, & RETALIATION

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.)

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 the 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 the DFEH until:

a) The DFEH files a civil action for the alleged violation; or

b) 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 the 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:

a) The unlawful practices are alleged to have been committed;

b) Records relevant to the alleged unlawful practices are maintained and administered;

c) The complainant would have worked or had access to public accommodation but for the alleged unlawful practice;

d) The defendant's residence or principal office is located; or

e) If the civil action includes class or group allegations on behalf of the DFEH, in any county in the state.

SB 807 tolls the deadline for the 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 the DFEH as a class or group complaint, the 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 the DFEH.

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

COVID-19

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.)

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. The law currently requires the employee's appointing power, upon proof of identity, to deliver the final paycheck to the designated person, who is authorized by statute to negotiate or deposit that check as if they were the deceased employee. 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 makes two changes to these provisions.

First, the bill 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. Second, for state employees only, the bill requires the state agency to endorse and deposit the employee's final paycheck warrant in the treasury, and issue a revolving fund check in the original amount payable to the designated person. This change was intended 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 Sub-Minimum 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 the 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 license holders 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 that when an employer is required to physically post information in the workplace, the employer may email the information to the employee by attaching the document(s) 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.)

WORKPLACE HEALTH & SAFETY

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.

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

BUSINESS & FACILITIES

AB 306 – Excludes From Field Act, Buildings Used, Or Intended To Be Used As Residential Housing For Faculty Or Other Employees And Their Families.

This bill excludes any school district or community college building or facility that serves, or is intended to serve, as residential housing for faculty or other employees of the school from certain requirements applicable to "school buildings" under the Field Act. Specifically, the Field Act requires the State's Department of General Services to supervise the design and construction of any school building, including both school district and community college district buildings. If the reconstruction, alteration, or addition to any "school building," is estimated to exceed $100,000, the State is also required to ensure that plans and specifications, as well as the work itself, complies with certain state rules, regulations, and standards.

This bill excludes from these requirements any building or facility that serves, or is intended to serve, as residential housing for school district and community college district teachers and employees, and their families. AB 306 does this by excluding from the Field Act's definition on "school building," "any building used or intended to be used by a school district as residential housing." Residential housing is defined as "any building used as a personal residence by a teacher or employee of a school district or community college district, with the teacher's or employee's family." As a result, housing for K-12 and community college staff, will now be reviewed by local building departments rather than the State, with the hope that this will help expedite the development of school district and community college district employee housing projects.

(AB 306 adds Sections 17283.5 and 81050.5 to the Education Code and Section 4454.5 to the Government Code.)

AB 846 – Authorizes Job Order Contracting By School Districts And Community College Districts Until January 1, 2027.

Current law authorizes school districts and community college districts to enter into job order contracts until January 1, 2022. AB 846 extends that authorization to January 1, 2027.

Job order contracting is a procedure that allows for the awarding of contracts based on prices for specific construction tasks rather than bids for a specific project. A catalog or book identifies all work that could be performed and the unit prices for each of those tasks. The tasks are based on accepted industry standards and prices include the cost of materials, labor, and equipment for performing the work, but exclude overhead and profit. A contractor will bid an adjustment factor to the pre-set unit prices rather than a total price for the project. The selection of contractors is based on the lowest responsible bidder.

Job order contracting is intended to reduce costs and accelerate completion of smaller projects; it is not generally viewed as an appropriate method of contracting for large, complex construction projects that require extensive or innovative design or are likely to encounter changes and revisions during constructions.

AB 846 also adds a requirement that a contractor awarded a job order contract in excess of $25,000 must provide the school district or community college district an enforceable commitment that the contractor and all of its subcontractors will use a skilled and trained workforce for all work performed on the

contract that involves an appenticable occupation in the building and construction trades. This new requirement, however, does not apply if the job order contract is subject to a project labor agreement that already binds the contract and all subcontractors to use a skilled and trained workforce to perform the job order contract.

(AB 846 amends Sections 20665.23, 20665.33, 20919.23, and 20919.33 of the Public Contract Code.)

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 or legal guardian.

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

AB 1276 – Excludes Public Schools From New Rules Prohibiting Food Facilities From Providing Single-Use Utensils Or Condiments, Unless Specifically Requested By The Consumer.

This bill prohibits a food facility from automatically providing customers (whether they are eating on-site or ordering delivery) with single-use plastic straws, single-use foodware accessories (e.g., chopsticks, utensils, coffee stirrers) or standard condiments packaged for single use (e.g., hot sauce and ketchup packets), unless specifically requested by the consumer. Additionally, single use foodware accessories and standard condiments may no longer be packaged in a bundled manner that prevents a consumer from only taking one type of single-use foodware accessory or the one type of desired condiment. The purpose of this bill is to reduce the use of and waste generated by single-use food service products.

These new requirements do not apply to correctional institutions, health care facilities, residential care facilities, and public school cafeterias.

(AB 1276 amends Sections 42270, 42271, 42272, and 42273 of the Public Resources Code.)

SB 442 – Authorizes A County Committee On School District Organization To Approve A Proposal To Establish Trustee Area Elections For The Governing Board Of A School District Or Community College District, Without A Vote Of The District's Electorate, Including A District Whose Governing Board Is Provided For In A City Or City/County Charter.

School districts and community college districts have been moving away from at-large elections, in part, to preempt or resolve claims under the California Voting Rights Act that at-large elections have a diluting impact on the voting rights of minority communities.

Existing law has established general procedures for a school district or community college district to transition from at-large elections to trustee-area elections. Existing law provides that in order for a school district or community college district to establish, abolish, or rearrange boundaries for trustee areas, or increase to seven or decrease to five, the number of trustees, the county committee on school district organization must approve a proposal to establish trustee areas to constitute an order of election. The proposal is then presented to the electors of the district. This process is referred to below as the "County Committee Process."

The existing law also excluded school districts governed by a board of education provided for in the charter of a city or city and county from the County Committee Process.

SB 442 does the following:

- Deletes the prior exclusion for school districts governed by a board of education provided for in the charter of a city or city and county, and makes those districts subject to the County Committee Process even if the charter specified a different method of election.

- Changes the County Committee Process to allow a county committee to approve a proposal to establish trustee areas and elect trustees using district-based elections (aka "by trustee-area" elections) without having to submit the resolution to the electors of the district (New Process).

    - The New Process involves the county committee adopting a resolution that includes a declaration stating:

- That the change in the method of electing members of the government body is made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 commencing with Section 14025) of Division 14 of the Elections Code).

- That the resolution is effective upon adoption and shall govern all elections for trustees occurring at least 125 days after the adoption of the resolution.

o The county committee must not rearrange trustee area boundaries in a school district or community college district that has established a hybrid or independent redistricting commission.

Existing law also allows a community college district to change election systems upon adoption of a resolution supporting the change by the board of trustees and approval by the Board of Governors of the California Community Colleges. However, any increase in the number of trustees requires those trustees to be elected at the next regular district election of the board members occurring at least 123 days after the governing board approves the increased number of trustees. This process is referred to below as the "CCD Exception."

SB 442 also revises the CCD Exception to increase the 123 days to 125 days.

Districts in the process of changing election methods or considering redistricting changes should consult with counsel about how SB 442 impacts current plans.

(AB 442 amends Sections 5019, 5020, 5021, 5025, and 72036 of the Education 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.)

Train the Trainer Program

Become a Certified Harassment Prevention Trainer for your Organization!

LCW Train the Trainer sessions will provide you with the necessary training tools to conduct the mandatory AB 1825, SB 1343, AB 2053, and AB 1661 training at your organization.

California Law requires employers to provide harassment prevention training to all employees. Every two years, supervisors must participate in a 2-hour course, and non-supervisors must participate in a 1-hour course.

QUICK FACTS:

- Trainers will become certified to train both supervisors and non-supervisors at/for their organization.
- Attendees receive updated training materials for 2 years.
- Pricing: $2,000 per person. ($1,800 for ERC members).

Upcoming Dates:

Via Zoom

November 29, 2021

9:00 AM - 4:00 PM

INTERESTED?

To learn more about our program,
please visit our website below
or contact Anna Sanzone-Ortiz at 310.981.2051
or asanzone-ortiz@lcwlegal.com.