

Spring Showers Bring Job Killer Bills to California

Article By:

Sehreen Ladak

Philippe A. Lebel

Pablo Neruda once said “you can cut all the flowers but you cannot keep spring from coming.” Likewise, California businesses’ protests against oppressive employment legislation don’t seem to stem the tide of the Legislature’s latest batch of anti-employer bills.

The California Chamber of Commerce has just identified a host of recently introduced “[Job Killer Bills](#)” pending before the California Legislature. This year’s list includes bills that would, among other things, inflate employer data reporting requirements and further expand the scope of the Fair Employment and Housing Act (“FEHA”). Here are a few from the list:

Data Reporting and Publication

- **[AB 2095 \(Kalra; D-San Jose\)](#) Employment Information & Worker Metrics.** Would require employers with 1,000 or more employees in California to annually submit wage and hour and employee benefits data regarding employers’ entire United States workforce. The Labor and Workforce Development Agency would then publish employers’ scores and rankings based on the collected statistics. This bill is similar to AB 1192 proposed last year by the same author, which was placed in the Assembly Inactive File at the author’s request in June 2021.
- **[SB 1162 \(Limón; D-Goleta\)](#) Publication of Pay Data.** Expands upon the legislation enacted two years ago requiring employers with 100 or more employees to report specific pay data annually. SB 1162 would require the pay data reports to be published on a public website and impose civil penalties against employers who fail to report required pay data. SB 1162 also would require covered employers to provide pay scale information to job applicants.

Expansion of the FEHA

- **[AB 2182 \(Wicks; D-Oakland\)](#) Expansion of Duty to Accommodate Employees for Family Responsibilities.** Would amend the FEHA to add “familial responsibilities” as a protected classification. The bill defines “familial responsibilities” as obligations of an employee or applicant to provide care for a minor child or family member who relies on the employee or

applicant for medical care or assistance with activities of daily living. Not only does AB 2182 prohibit discrimination based on “familial responsibilities,” it also imposes an obligation on employers to provide reasonable accommodations for employees with such responsibilities, and prohibits retaliation for requests for accommodations. A similar bill (AB 1119) introduced by the same author last year failed to advance beyond the Assembly last year.

- **[AB 2188 \(Quirk; D-Hayward\)](#) Cannabis Use & Employment Discrimination.** Would make it unlawful to discriminate against employees for the use of cannabis off the job and away from the workplace. While the bill would not bar an employer from taking adverse action against an employee who is impaired while at the worksite or on duty, it would prohibit use of traditional marijuana tests, such as urine and hair testing, and compel employers to utilize saliva-based testing. Notably, the bill would not apply to employees in building or construction, and would not preempt state and federal laws related to drug testing for controlled substances, including federal funding or federal licensing-related benefits.

Labor Relations

- **[AB 2183 \(Stone; D-Scotts Valley\)](#) Agricultural Labor Relations.** Would change union election procedures, in part by permitting agricultural employees to vote for union election through a representation ballot card election signed by a majority of employees who were employed at any time during the employer’s last payroll period before the filing of the petition for representation ballot card election rather than independent and secret ballots. AB 2183 also would limit employers’ ability to challenge the ballot cards submitted by forcing employers to post a bond.

Privacy Rights

- **[SB 1189 \(Wieckowski; D-Fremont\)](#) New Private Right of Action for Biometric Information.** Would prohibit private entities from collecting or receiving biometric information unless they provide notice and receive consent from the individual, similar to Illinois’ Biometric Privacy Act, which has spawned an avalanche of class action lawsuits. SB 1189 would provide a private right of action and allow for recovery of statutory or actual damages, *punitive damages*, attorneys’ fees and costs, and any other relief the court determines appropriate.

States of Emergency

- **[SB 1044 \(Durazo; D-Los Angeles\)](#) State of Emergency.** As we reported last month [here](#), this bill would permit employees, without notice, to leave their workplace – or not show up at all – if they “feel unsafe.” SB 1044 would prohibit employers from taking any adverse action against employees who decide to leave the premises or not arrive at work during a state of emergency or emergency condition when the employees “feel unsafe.” SB 1044 also would prohibit employers from limiting employees’ use of mobile phones or other communication devices in such an event, if the employee wishes to communicate about their safety, seek emergency assistance, or assess the situation.

Wage and Hour Changes

- **AB 2932 (Low; D-Campbell) Workweek and Overtime Requirements.** As we reported [here](#), AB 2932 would require that companies with 500 or more employees pay weekly overtime for work in excess of 32 hours in a workweek.

Workers' Compensation

- **SB 213 (Cortese; D-San Jose) Workers' Compensation Expansion of Presumption of Injury.** A carryover bill from 2021, SB 213 would create a rebuttable presumption that infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases arose out of work for any hospital direct patient care worker for purpose of claiming workers' compensation benefits. The bill also would extend these presumptions for specified time periods after the hospital employee's termination of employment.

We will continue to track the progress of these and any other "job killer" bills as they move through the Legislature.

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