

California Legislative Update

September 30 marked the deadline for Governor Newsom to sign into law or veto legislation that the California Legislature sent to his desk. One significant piece of legislation that the Governor signed was AB 1281, a bill supported by SHRM and CalSHRM.

The bill extends by one year the clarification that the definition of “consumer” under the California Consumer Privacy Act of 2018 (CCPA) excludes individuals whose personal information has been collected by a business in the course of their activities for the business as an employee, contractor, or job applicant. Since the current definition is extremely broad and encompasses all California residents, the CCPA could have been read to apply to Californians even in their capacity as employees.

This interpretation was very concerning to SHRM since it could result in some unintended consequences. For instance, an employee accused of sexual harassment could request that complaints about them be removed from company files pursuant to the protections under the CCPA. As SHRM is committed to eliminating all forms of harassment in the workplace, we argued that actual findings of workplace harassment should be preserved in employee records.

Additionally, we stated that human resource professionals would clearly not want individuals to delete other important employee information in relation to personnel files, health benefits or for other employment purposes. The Governor agreed with SHRM’s point of view and the clarification will be extended until January 1, 2022.

The Governor signed several other bills that SHRM monitored throughout the legislative process. These include:

- **AB 685** Requires an employer to notify employees within 24 hours if they have been exposed to COVID-19. Employers must also notify the Division of Occupational Safety and Health (Cal OSHA).
- **AB 979** Requires, by January 1, 2022, a publicly held domestic or foreign corporation whose principal executive office is located in California to have a minimum of one director from an underrepresented community (An individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender).
- **AB 1867** Requires private employers that employ 500 or more employees in the United States to provide California employees with supplemental paid sick leave for COVID-19-related absences. The bill takes effect immediately and will expire on December 31, 2020.
- **AB 1947** Extends from six months to one year the period for a person to file a retaliation complaint with the Labor Commissioner. Also amends California’s whistleblower statute (Labor Code section 1102.5) to allow a judge to award reasonable attorneys’ fees to a prevailing plaintiff.
- **AB 1963** Adds a human resource employee of a business with 5 or more employees that employs minors to the list of individuals who are mandated reporters of child abuse or neglect.
- **AB 2257** Exempts from the requirements of last year’s AB 5 (independent contractors) certain occupations in connection with creating, marketing, promoting, distributing sound recordings or musical compositions and performing in single-engagement live events. In addition, recasts the professional services exemption for various freelancer and creative professions to require that

these individuals are not replacing employees, are not primarily performing their work at the hiring entity's business location, and are not restricted from working for more than one entity.

- **SB 973** Beginning March 31, 2021, and annually thereafter, private employers with 100 or more employees that are required to submit an annual EEO-1 will be required to submit “pay data reports” for the prior calendar year to the Department of Fair Employment and Housing (DFEH). The report would need to include very specific information including the number of employees by race, ethnicity, and sex in 10 job categories.
- **SB 1159** Until January 1, 2023, defines “injury” for an employee to include illness or death resulting from COVID-19. Creates a disputable presumption that an injury that develops while an employee is employed arose out of and in the course of the employment.
- **SB 1383** Makes it unlawful for an employer with 5 or more employees (current law is employers with 50 or more employees) to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner. Defines employee for these purposes as an individual who has at least 1,250 hours of service with the employer during the previous 12-month period, unless otherwise provided.

The Governor vetoed the following bills:

- **AB 3216** Would have required employers that operate an enterprise defined as a hotel, event center, airport hospitality operation, or the provision of building services to office, retail, or other commercial buildings to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system.
- **SB 1102** Would have required an employer to provide an H-2A employee on the day the employee begins work in the state, a written notice in Spanish and, if requested by the employee, in English, containing specified information relative to an H-2A employee’s rights pursuant to federal and state law.

Because this was the second year of a two-year session, bills that did not make it to the Governor’s desk this summer are no longer viable when the new legislative session begins in December. As is the case in most years, it is highly likely that many of the bills that were vetoed by Governor Newsom, or failed to make it to his desk, will be reintroduced in January when the new Legislature convenes. As always, SHRM will actively advocate our members’ positions on workplace legislation introduced in California.

For questions on any piece of California legislation, please contact SHRM’s Director, State Affairs, California, Jason Gabhart at Jason.Gabhart@shrm.org.