KRAW LAW GROUP
A PROFESSIONAL CORPORATION

January 7, 2024

TO: **Pipe Trades Training Fund**

FROM: **Kraw Law Group, APC**

RE: **New California Employment Laws Passed in 2024**

Below is a summary of the new key legislation that will impact California employers. Many of the new changes take effect January 1, 2025. Employers may wish to update their employee handbooks as appropriate.

Laws applicable to all employers in California include:

- AB 2499: Time Off for Victims of Violence (with additional requirements applicable to California employers with 25 or more employees)
- SB 1340: Local Enforcement of Employment Discrimination Laws
- SB 399: California Worker Freedom from Employer Intimidation Act; "Captive Meetings" Ban
- AB 1034: Construction Industry PAGA Exemption Extension
- AB 2123: Amendments to Paid Family Leave
- SB 1105: Expanded Use of Paid Sick Leave for Agricultural Employees
- AB 2299: Whistleblower Protections Posting
- AB 3234: Employers Conducting Social Compliance Audits
- SB 988: Freelance Worker Protection Act

Laws applicable to employers in California with 5 or more employees are:

- AB 1815: Amendments to the CROWN Act
- SB 1100: Discrimination: Driver's License
- SB 1137: Protected Characteristics: Intersectionality

AB 1815: Amendments to the CROWN Act

Applicability: California employers with 5 or more employees

On September 26, 2024, Governor Newsom signed AB 1815, which amends the definition of "race" in the anti-discrimination provisions of the California Government Code, and Education Code, as well as the definitions of "protective hairstyles." Under the bill, the same definitions apply to the Unruh Civil Rights Act which covers discrimination by businesses. Under the amendments, the term "historically" is removed from the definitions of race and race is defined as "inclusive of traits associated with race, including but not limited to hair texture and protective hair styles." "Protective hairstyles" include but are not limited to such hairstyles as braids, locs, and twists."

The bill applies retroactively since it is a declaration of existing law.

SB 1100: Discrimination: Driver's License
Effective Date: January 1, 2025
Applicability: California employers with 5 or more employees

On September 28, 2024, Governor Newsom signed SB 1100, amending the California Fair Employment and Housing Act (FEHA), which makes it an unlawful employment practice for an employer to include a statement in employment materials that an applicant must have a driver's license. An employer may not include a statement about the need for a driver's license in job advertisements, postings, applications, and similar employment material unless the following conditions are satisfied:

- The employer reasonably expects driving to be one of the job functions of the position.
- The employer reasonably believes that using an alternative form of transportation would not be comparable in travel time or cost to the employer. "Alternative form of transportation" includes, but is not limited to: ride-hailing services; taxis; carpooling; bicycling; and walking.

SB 1137: Protected Characteristics: Intersectionality
Effective Date: January 1, 2025
Applicability: California employers with 5 or more employees

On September 27, 2024, Governor Newsom signed SB 1137 into law, which adopts the concept of intersectionality for purposes of discrimination. It clarifies that the Unruh Civil Rights Act, the provisions of the Education Code prohibiting discrimination in public education, and the California Fair Employment Housing Act (FEHA) prohibits discrimination on the basis of intersectionality (e.g., combination) of two or more protected traits instead of a single protected category.

Through SB 1137, California's Legislature affirms the decision of *Lam v. University of Hawai'i* (9th Cir. 1994) 40 F.3d 1551, where the Ninth Circuit found that when an individual claims multiple bases for discrimination or harassment, it may be necessary to establish whether the discrimination or harassment occurred on the basis of a combination of these factors, not just one protected characteristic alone.

AB 2499: Time Off for Victims of Violence
Effective Date: January 1, 2025
Applicability: California employers; additional requirements for employers with 25 or more employees

On September 29, 2024, Governor Newsom signed AB 2499, expanding the list of crimes for which employees can take time off and allowing employees to take protected time off to assist family members who are victims of specified crimes.

Current California law protects employees from discrimination or retaliation for taking time off because the employee is a victim of "crime or abuse" or for taking time off to appear in court to comply with a subpoena or other court order as a witness. Under AB 2499, these

protections remain in place, but broaden the definition of "victims" to include a victim of a "qualifying act of violence," which means any of the following, regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime:

- Domestic violence
- Sexual assault
- Stalking
- An act, conduct, or pattern of conduct that includes:
    - An individual causes bodily injury or death to another
    - An individual exhibits, draws, brandishes, or uses a firearm or other dangerous weapon, with respect to another
    - An individual uses or makes a reasonably perceived or actual threat or use of force against another to cause physical injury or death.

Under the bill, all employees are permitted to use vacation, personal leave, paid sick leave, or compensatory time off that is available unless otherwise provided in a collective bargaining agreement. Additionally, an employer with 25 or more employees cannot discriminate or retaliate against an employee who is a victim (or who has a family member who is a victim) of a qualifying act of violence for taking time off for other prescribed purposes. Under the law, employers will be required to provide written notice of their rights established under this bill to new hires, to all employees annually, at any time upon request, and any time the employer becomes newly aware that an employee or an employee's family member is a victim.

The bill also moves the existing employee protections from the Labor Code and instead categories them as unlawful employment practices within the California Fair Employment and Housing Act. It also moves the enforcement authority to the California Civil Rights Department.

SB 1340: Local Enforcement of Employment Discrimination Laws

Effective Date: January 1, 2025
Applicability: California employers

Under existing law, the Civil Rights Department (CRD) is authorized to receive, investigate, conciliate, mediate and prosecute complaints against employment discrimination. On September 26, 2024, Governor Newsom signed SB 1340 into law, which allows cities, counties or other political subdivisions of the state to enforce a local law prohibiting discrimination in employment if certain requirements are met. The requirements are:

1. The local enforcement concerns an employment complaint filed with the CRD;
2. The local enforcement occurs after the CRD has issued a right-to-sue notice under Government Code section 12965;
3. The local enforcement commences before the expiration of time to file a civil action specified in the right-to-sue notice; and
4. The local enforcement is pursuant to a local law that is at least as protective as the FEHA.

During local enforcement, the time to sue provided in the right-to-sue notice is tolled.

SB 399: California Worker Freedom from Employer Intimidation Act; "Captive Meetings" Ban

Effective Date: January 1, 2025
Applicability: California employers

On September 27, 2024, Governor Newsom signed SB 399 into law, which enacts the California Worker Freedom from Employer Intimidation Act. The new law prohibits employers from holding "captive audience meetings" (i.e., employer-sponsored meetings where an employer is communicating its views and opinions about religious or political matters, including the topic of union representation).

Specifically, an employer is prohibited from subjecting or threatening to subject an employee to discharge, discrimination, or retaliation because the employee declines to attend an employer-sponsored meeting or refuses to participate in, receive, or listen to any communications with the employer's opinion or view about religious or political matters. An employer who violates this section shall be subject to a civil penalty of five hundred dollars ($500) per employee for each violation.

The law defines "political matters" as anything relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or labor organization. Similarly, the law defines "religious matters" as anything relating to religious affiliation and practice and the decision to join or support any religious organization or association.

Under this law, employers are prohibited from mandating employees to attend employer information sessions regarding a labor organization even though the employer schedules the meeting during work time and pays employees to attend the meeting. The law does not apply to communicating information that an employer is legally required to share with employees (e.g., harassment and discrimination training).

It is anticipated that the law will face legal challenges based on preemption by the federal National Labor Relations Act.

AB 1034: Construction Industry PAGA Exemption Extension

Effective Date: January 1, 2025
Applicability: California employers

On September 28, 2024, Governor Newsom signed AB 1034, which extends the exemption from the California Private Attorneys General Act (PAGA) for certain employees in the construction industry until January 1, 2038. The exemption was set to sunset January 1, 2025.

This extension applies to employees in the construction industry who are covered by a collective bargaining agreement (CBA) that meets specific conditions, including:

1. Expressly provides for wages, hours of work, and working conditions of employees.
2. Provides premium wage rates for all overtime worked.

3. The Employee receives a regular hourly pay rate of not less than 30 percent more than the state minimum wage.

To qualify, the CBA must prohibit all of the violations of the labor code that are redressable pursuant to PAGA and provide for a grievance and binding arbitration process to redress those violations. The CBA must also expressly waive PAGA's requirements in clear and unambiguous terms and authorize the arbitrator to award any and all remedies available under the California Labor Code, with the exception of penalties that would otherwise be awardable to the Labor Workforce Development Agency.

AB 2123: Amendments to Paid Family Leave
Effective Date: January 1, 2025
Applicability: California employers

On September 29, 2024, Governor Newsom signed a significant change to the state's Paid Family Leave (PFL) program. Beginning January 1, 2025, AB 2123 will eliminate employers' ability to require employees to use up to two weeks of company-provided vacation before they start receiving PFL benefits paid by the state.

PFL is a state-run program providing benefits to individuals taking time off to care for a seriously ill child, spouse, parent, or domestic partner, bond with a new minor child, or assist military family members under active duty.

SB 1105: Expanded Use of Paid Sick Leave for Agricultural Employees
Effective Date: January 1, 2025
Applicability: California employers

On September 24, 2024, Governor Newsom signed SB 1105, which expands existing paid sick leave provisions to allow agricultural employees who work outside to use paid sick leave to avoid smoke, heat, or flooding conditions created by a local or state emergency, including sick days necessary for preventive care due to their work or such conditions. An "agriculture employee" is defined as a person employed in any of the following:

- An agricultural occupation, as defined in Wage Order No. 14 of the Industrial Welfare Commission.
- An industry that prepares agricultural products for the market on the farm, as defined in Wage Order No. 13 of the Industrial Welfare Commission.
- An industry that handles products after harvest, as defined in wage Order No. 8 of the Industrial Welfare Commission.

Current requirements of the Healthy Workplaces, Healthy Families Act remain in effect with the amendment above. As a reminder, starting January 1, 2024, employers operating in California are required to provide at least 40 hours or 5 days of paid sick leave to most employees.

AB 2299: Whistleblower Protections Posting
Effective Date: January 1, 2025
Applicability: California employers

On July 15, 2024, Governor Newsom signed AB 2299, which requires the California Labor Commissioner to develop a standardized, model list of employee's rights and responsibilities under existing whistleblower laws.

Employers will be required to post this notice beginning January 1, 2025. The notice must be written in font larger than 14 point and contain the telephone number of the whistleblower hotline. The new bill codifies the requirement for the Labor Commissioner to develop a model notice that complies with employers' existing posting requirements so that employers posting the model notice shall be deemed in compliance with the law.

The model notice provided by the Labor Commissioner is attached to this memorandum.

AB 3234: Employers Conducting Social Compliance Audits
Effective Date: January 1, 2025
Applicability: California employers

On September 22, 2024, Governor Newsom signed AB 3234, which provides that any employer that has voluntarily subjected it business to a "social compliance audit" to determine in whole or in part if child labor is involved in the employer's operations or practices, must post a link on its website to report detailing the findings of the audit. There is no requirement that a business conduct a social compliance audit.

"Social compliance audit" is defined as a voluntary, nongovernmental inspection or assessment of any employer's operations and practices to verity that it complies with state and federal labor laws, including health and safety regulations regarding child labor. If a business conducts a voluntary audit, there is certain information that the report must include.

SB 988: Freelance Worker Protection Act
Effective Date: January 1, 2025
Applicability: California employers

On September 28, 2024, Governor Newsom signed the Freelance Worker Protection Act (FWPA), which imposes minimum requirements relating to contracts between a hiring party and a freelance worker.

Under the new law, "freelance worker" is defined as a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as a bona fide independent contractor by the hiring party to provide professional services in exchange for an amount equal to or greater than $250. The FWPA only applies to freelance-style services listed in California Labor Code Section 2778(b)(2).

Under the law, an agreement between a hiring party and a freelance worker must be in writing and include the following:

- Names and addresses of both parties.
- An itemized list of services, the value of those services and the rate and method of compensation.
- Payment due dates or mechanisms for determining them.
- Due dates the freelance worker to report completed services for processing timely payment.

Once a freelance worker has commenced providing services, a hiring entity is prohibited from requiring the worker to accept less compensation or provide more services than previously agreed in order to receive timely payment. The law puts in place certain prohibitions against retaliatory actions by hiring entities for a freelance worker taking any of the following actions:

- Opposing any practice prohibited by the FWPA.
- Participating in proceedings related to the enforcement of the FWPA.
- Seeking to enforce rights under the FWPA.