

# CELA 33rd Annual Employment Law Conference

## Top 10 *Signed* Employment Bills of 2020\* and notable vetoes and failed bills

For more information please click on the bill, visit [www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov), or email [mariko@cela.org](mailto:mariko@cela.org).

\*These bills will become law effective January 1, 2021, unless otherwise specified.

### Signed Bills

1. **Retaliation and Attorneys' Fees.** [AB 1947](#) (Kalra, **\*\*CELA-Sponsored\*\***) This bill will extend the filing deadline for administrative retaliation complaints from 6 months to 1 year. The bill will also allow workers to recover their attorneys fees if they prevail in a whistleblower action under Labor Code Section 1102.5. *Status: Signed.*
2. **Pay Data Reporting to Close the Gender and Race Wage Gap.** [SB 973](#) (Jackson, **\*\*CELA-Sponsored\*\***) The COVID-19 pandemic is highlighting the consistent undervaluing of women's work and the ways in which gender- and race-based pay disparities put women (particularly women of color) at higher risk of economic insecurity and contribute to higher poverty rates overall. This bill would help close the gender wage gap by requiring California employers with 100 employees or more to submit an annual pay data report to the state outlining the compensation and hours worked of its employees by gender, race, ethnicity, and job category. *Status: Signed.*
3. **Family Leave.** ([SB 1383](#) Jackson, **\*\*CELA-Priority\*\***) This bill expands the California Family Rights Act to cover all employers with 5 or more employees and to additionally allow employees to use unpaid job protected leave to care for a domestic partner, grandparent, grandchild, sibling, or parent-in-law who has a serious health condition. For claims against employers with 5-19 employees, parties must participate in mediation through the Department of Fair Employment and Housing before a civil action can be filed. *Status: Signed.*
4. **Wages: successor liability.** [AB 3075](#) (Gonzalez) This bill establishes successor liability to a corresponding judgment debtor if any of the following can be established: (1) The successor employer uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor, (2) The successor employer has substantially the same owners or managers that control the labor relations as the judgment debtor, (3) The successor employer employs as a managing agent any person who directly controlled the wages, hours or working conditions of the affected workforce of the predecessor employer, or (4) The successor employer operates a business in the same industry and that business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor. This bill holds a successor to a judgment debtor liable for any wages, damages and penalties that judgment debtor owes to its workforce pursuant to a final judgment after the time to appeal has expired. This bill requires a business's articles of incorporation to contain a statement signed by the filers, under penalty of perjury, that the filer is not an owner, director, officer, managing agent, or any other person acting on behalf of an employer, as defined, that has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, or a pending appeal, for violation of any wage order or provision of the Labor Code. *Signed.*
5. **Dynamex: employees and independent contractors.** [AB 2257](#) (Gonzalez) This AB 5 follow up bill

would exempt from the 3-part ABC test for employment status and instead apply the test set forth in the California Supreme Court's *Borello* decision (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341) for certain occupations such as musicians, insurance inspectors and competition judges, subject to specified conditions. The bill would also add appraisers and certain master class teachers to the professional services exemption, revise the freelancer exemption, and recast the exemption for referral agencies, as specified. The bill would also create an exemption for business-to-business relationships between 2 or more sole proprietors, as specified. The bill would provide that a hiring entity need only satisfy all of the conditions of any one of the exemption provisions for the ABC Test not to apply. *Status: Signed and **\*\*takes effect immediately\*\****

6. **COVID-19: imminent hazard to employees: exposure: notification: serious violations.** [\*\*AB 685\*\*](#) (**Reyes**) This bill requires employers to provide written notice and instructions to employees who may have been exposed to COVID-19 at their worksite and would enhance the Division of Occupational Health and Safety's (Cal/OSHA) ability to enforce health and safety standards to prevent workplace exposure to and spread of COVID-19. *Status: Signed and **\*\*takes effect immediately\*\****
7. **Supplemental paid sick leave; Small employer family leave mediation; handwashing.** [\*\*AB 1867\*\*](#) (**Committee on Budget**) This bill makes various statutory changes to implement COVID-19 food sector supplemental paid sick leave (SPSL), and COVID-19 SPSL for essential workers including active firefighters, and healthcare providers, as specified, and workers not covered under the Families First Coronavirus Response Act (FFCRA). This bill also establishes a small employer family leave mediation pilot program at the Department of Fair Employment and Housing (DFEH), which would require plaintiffs to submit to mediation before filing a civil action against an employer with 5-19 employees. *Status: Signed and **\*\*takes effect immediately\*\****
8. **Workers' compensation: COVID-19: critical workers.** [\*\*SB 1129\*\*](#) (**Hill**) This bill creates a disputable presumption, as specified, that illness or death resulting from the coronavirus disease (COVID-19) arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill limits the applicability of the presumption under certain circumstances. The bill requires an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill also makes a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. *Status: Signed and **\*\*takes effect immediately\*\****
9. **Discrimination against victims of crime.** [\*\*AB 2992\*\*](#) (**Weber**) This bill prohibits an employer from discharging, or discriminating or retaliating against, an employee, who is a victim of crime or abuse, for taking time off from work to obtain or attempt to obtain relief, as prescribed. *Signed.*
10. **Civil procedure: electronic filing, trial delays, and remote depositions.** [\*\*SB 1146\*\*](#) (**Umberg**) This bill requires a party represented by counsel, who has appeared in an action or proceeding, to accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. The bill requires a party represented by counsel, upon the request of any party who has appeared in an action or proceeding and who provides an electronic service address and a copy of this rule, to electronically serve the requesting party with any notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission. *Status: Signed and **\*\*takes effect immediately\*\****

## Notable Vetoes and Failed Bills

1. **Right to recall and right of retention** ([AB 3216](#) Assemblymembers Kalra & Gonzalez **\*\*CELA-Priority\*\***) AB 3216 ensures the right of recall and retention for workers in hotels, event centers, airports, and building services – industries hardest hit by the shelter-at-home rules. *Vetoed (a veto message can be found [here](#)).*
2. **Domestic workers' health and safety** ([SB 1257](#) Durazo **\*\*CELA-Sponsored\*\***) COVID-19 has presented many health and safety risks, particularly for domestic workers who are caring for our sick and elderly. Unfortunately, domestic workers are exempt from our health and safety laws under Cal/OSHA. This bill would remove this unjust exemption to help ensure domestic workers have basic health and safety protections. *Vetoed (a veto message can be found [here](#)).*
3. **Notice of workplace rights** ([SB 1102](#) Monning) This bill would require employers to include in their written workplace rights notice to all employees, specified information in the event of a federal or state emergency or disaster declaration that may affect their health and safety. Additionally, this bill would require employers of agricultural employees coming to work in California under the federal H-2A Program for Temporary Agricultural Workers to give each employee an H-2A employee specific written notice on labor rights and obligations under federal and state law, including notice of emergency or disaster declarations. *Vetoed (a veto message can be found [here](#)).*
4. **Warehouse workers' rights.** [AB 3056](#) (Gonzalez) This bill would enact prescribed protections for certain warehouse and distribution center employees. The bill would prohibit an employer from imposing a quota upon an employee under which reasonable amounts of time that the employee spends on any of the specified activities is counted toward the time required for completing the quota, or results in the employee having less time to complete the quota. The bill would require the Labor Commissioner to investigate alleged violations of these provisions and order appropriate temporary measures pending the completion of a full investigation or hearing. The bill would also authorize the Labor Commissioner to order appropriate relief for employees or other persons whose rights were violated and take appropriate enforcement actions, including imposing civil penalties, against employers, as provided. *Held on the Senate Floor.*
5. **Meal and rest breaks: remote work.** [SB 729](#) (Portantino) This bill would prohibit an employer from recovering civil penalties from an employer under the Private Attorneys General Act (PAGA) for violations of provisions requiring the employer to provide meal and rest breaks, if the employee engaged in remote work as specified. *Defeated in Assembly Labor Committee*
6. **Garment workers' rights.** [SB 1399](#) (Durazo) This bill would expand the definition of garment manufacturing to include dying, altering a garment's design, and affixing a label on a garment. The bill would prohibit any employee engaged in the performance of garment manufacturing to be paid by the piece or unit, or by piece rate, except as specified. *Held on the Senate Floor.*