Top 20 Employment Bills of 2021*

For more information please click on the bill, visit www.leginfo.legislature.ca.gov, or email mariko@cela.org.

*These bills will become law effective January 1, 2022, unless otherwise specified.

CELA-Sponsored and Priority Bills

1. Confidentiality Agreements – SB 331 (Senator Leyva) – expands the prohibition on non-disclosure agreements (“NDAs”) in settlement agreements involving sexual harassment, sexual assault, and sex discrimination to cover settlement agreements involving all forms of harassment or discrimination. This bill also expands the prohibition on overly-broad confidentiality and non-disparagement clauses in employment agreements to cover workers who are required to sign those types of clauses as part of a severance agreement. Signed.

2. Domestic Workers Health & Safety – SB 321 (Durazo) – establishes an advisory committee to (1) make recommendations, in consultation with other specified divisions and entities, to the Department of Industrial Relations or the Legislature to protect the health and safety of household domestic service employees and (2) to develop industry-specific occupational health and safety guidance to educate household domestic service employees and employers. Signed.

3. Arbitration Fees – SB 762 (Senator Wieckowski) – strengthens recently-enacted CELA-sponsored legislation that established that an employer is in breach of the arbitration agreement (and waives its right to compel or proceed in arbitration) if it does not pay its arbitration fees within 30 days of the due date. To ensure compliance, this bill requires the arbitration provider to send both parties a copy of the fee invoice with the due date. Signed.

Other Key Labor and Employment Bills of 2021

4. Agricultural Workers – AB 73 (Rivas) – expands the definition of essential workers to include agricultural workers for the purpose of accessing the personal protective equipment (PPE) stockpile for emergencies established by the State Department of Public Health and the Office of Emergency Services. Directs the Division of Occupational Safety and Health (Cal/OSHA) to review and update the content of wildfire smoke training in existing regulations. Requires training provided by employers to be in a language and manner readily understandable by employees. Signed.

5. Paid Family Leave – AB 123 (Gonzalez) – increases the wage replacement rate (1) for paid-family-leave (PFL) claims commencing after January 1, 2023, but before January 1, 2025 to 65% or 75% and (2) for claims commencing after January 1, 2025 to 70% or 90%. Vetoed. A veto message can be found here.

6. Tips – AB 286 (Gonzalez) – (1) prohibits a food-delivery platform from retaining any portion of amounts designated as a tip or gratuity and (2) requires food-delivery platforms to disclose to the customer and the food facility certain specified information related to fees, commissions, and costs charged to both parties. Signed.
7. **COVID Exposure Notifications** – **AB 654 (Reyes)** – clarifies and strengthens provisions enacted in 2020 relating to workplace COVID-19 exposure notifications. **Signed.**

8. **Warehouse Workers** – **AB 701 (Gonzalez)** – strengthens protections for warehouse workers by requiring specified employers of 100 or more nonexempt employees at a single warehouse distribution center or 1000 or more nonexempt employees at one or more warehouse distribution centers in California to provide each employee with a written description of (1) each quota that the employee is subject to within a defined time period and (2) any potential adverse action that could result from the employee’s failure to meet the quota. Any actions taken by an employee to comply with occupational health and safety laws, as specified, must be considered time on task and productive time for purposes of any quota or monitoring system, but the bill clarifies that meal and rest breaks are not considered productive time unless the employee is required to remain on call. The bill also establishes a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee doing either of the following: (1) initiating a request for the employee’s quota or personal-work-speed data or (2) making a complaint related to a quota violation, as specified. **Signed.**

9. **Wage Theft** – **AB 1003 (Gonzalez)** – Creates a new offense, punishable as either a felony or a misdemeanor, for the intentional theft of wages by an employer. The bill specifies that wages, gratuities, benefits or other compensation that are the subject of a prosecution under this section may be recovered as restitution in accordance with Penal Code Sections 1202.4 and 1203.1. Further, this section does not prevent the employee or the Labor Commissioner from commencing a civil action to seek Labor Code remedies for acts prosecuted under this section. **Signed.**

10. **Garment Workers** – **SB 62 (Durazo)** – This bill (1) prohibits the practice of piece-rate compensation for garment manufacturing except in the case of worksites covered by a valid collective bargaining agreement and (2) further requires a garment manufacturer that contracts with another person for the performance of garment manufacturing to share joint and individual civil legal responsibility and civil liability for workers employed by that other person. **Signed.**

11. **Civil Procedure** – **SB 241 (Umberg)** – This bill (1) establishes a statutory framework for conducting court proceedings in civil cases through the use of remote technology; (2) extends the general rule that a trial continuance or postponement caused by the COVID-19 pandemic extends other case deadlines to arbitration continuances or postponements; and (3) as of July 1, 2024, requires courts to transmit documents issued by the court electronically where parties have consented to or are required to use electronic service. **Signed.**

12. **Port Drayage Workers** – **SB 338 (Gonzalez)** – This bill expands the set of violations that can cause port drayage contractors to be placed on a Division of Labor Standards Enforcement list that extends joint liability for future violations to customers of that contractor. **Signed.**

13. **Pain & Suffering Damages** – **SB 447 (Laird)** – authorizes a decedent’s personal representative or successor in interest to recover damages for a decedent’s pain, suffering, or disfigurement in an action or proceeding on the decedent’s cause of action, as specified. **Signed.**
14. **Veteran’s Preference Policy** – **SB 665 (Umberg)** – establishes the Voluntary Veterans’ Preference Employment Policy Act (Act) and authorizes a private employer to establish a veterans’-preference employment policy without violating the Fair Employment and Housing Act. The bill specifies that an employer that adopts a voluntary veterans’-preference employment policy shall report annually to the Department of Fair Employment and Housing (DFEH), in a manner prescribed by DFEH, the number of veterans hired in that reporting year under the preference policy and any demographic information about those veterans that the employer obtained in response to DFEH’s reporting requirements. *Vetoed. A veto message can be found here.*

15. **Contractor Liability** – **SB 727 (Leyva)** – expands existing direct contractor liability to include liquidated damages and penalties in circumstances where the direct contractor fails to meet payroll monitoring and corrective action requirements, as specified. *Signed.*

16. **Fair Employment and Housing Act Procedures** – **SB 807 (Wieckowski)** – makes clarifying procedural modifications to the Fair Employment and Housing Act. This bill also extends the time that employers must retain specified employment records to match a recent increase in the length of time that workers have to file claims alleging employment discrimination. *Signed.*

17. **Workplace Health & Safety** – **SB 606 (Gonzalez)** – establishes a rebuttable presumption that an employer’s written policy that violates specified health and safety regulations exists at all of an employer’s worksites, adopts an “egregious violation” standard that gives Cal/OSHA the ability to stack penalties in cases where an employer has willfully and negligently refused to keep up safety standards. *Signed.*

18. **Mandatory Mediation** – **AB 1033 (Bauer-Kahan)** – revises the mandatory mediation pilot program for claims brought under the California Family Rights Act (CFRA) against small employers with 5-19 employees. This bill will require the employee to initiate the mediation against the employer before a civil action may be filed. Mediation is deemed complete if neither party requests the mediation, the employer fails to respond to the mediation requires, the Department of Fair Employment and Housing fails to initiate the mediation within 60 days of the request to mediate, or mediation does not resolve the claim within 30 days and further mediation would be fruitless. *Signed.*

19. **Rehiring and Retention of Hospitality Workers** – **SB 93 (Committee on Budget and Fiscal Review)** – Requires an employer, within five days of establishing a position, to offer its laid-off employees in writing and by email and text message, all job positions that become available after the effective date of this bill for which the laid-off employees are qualified. Specifies that the Division of Labor Standards Enforcement (DLSE) has exclusive jurisdiction to enforce the provisions of this bill. *Signed.*

20. **PAGA: Janitorial Workers** – **SB 646 (Hertzberg)** – exempts janitorial employees who are covered by a collective bargaining agreement that meets certain conditions from the Private Attorneys General Act of 2004. Specifically, the collective bargaining agreement must expressly provide for certain minimum wages and benefits, a grievance and binding arbitration process to redress PAGA violations, and the authority for an arbitrator to award any and all remedies otherwise available under the labor code. This bill does not apply to existing cases filed before January 1, 2022, when this bill will take effect. This law will sunset on January 1, 2028. *Signed.*