

California Department of Industrial Relations
Office of the Director

2018 Legislative Report



STATE OF CALIFORNIA

EDMUND G. BROWN, JR.

Governor

LABOR AND WORKFORCE DEVELOPMENT AGENCY

DAVID M. LANIER

Secretary

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

ANDRÉ SCHOORL

Director (Acting)

VICTORIA HASSID

Chief Deputy Director

GEORGE PARISOTTO

Administrative Director

Division of Workers' Compensation

ERIC ROOD

Chief

Division of Apprenticeship Standards

JULIE SU

Labor Commissioner

Division of Labor Standards Enforcement

JULIANN SUM

Chief

Division of Occupational Safety and Health

Contents

Chaptered Assembly Bills	5
Chaptered Senate Bills	7
Chaptered Bills by Division	8
Department of Industrial Relations (DIR)	8
Division of Apprenticeship Standards (DAS)	9
Division of Labor Standards and Enforcement (DLSE)	10
Division of Occupational Safety and Health (Cal/OSHA)	16
Division of Workers' Compensation (DWC)	17
Table of Amended Labor Code Sections	20
APPENDIX A: Vetoed Bills	23
Department of Industrial Relations (DIR)	25
Division of Apprenticeship Standards (DAS)	26
Division of Labor Standards and Enforcement (DLSE)	27
Division of Occupational Safety and Health (Cal/OSHA)	34
Division of Workers' Compensation (DWC)	35

Introduction

This Legislative Digest describes bills that were chaptered or vetoed during the second half of the 2017/18 Legislative Session and will have or would have had some impact on the California Department of Industrial Relations (DIR).

The brief summaries do not purport to provide a complete description of the legislation or to go into the details of the measures. The summaries provide a brief overview of the intent of the bills. Copies of the legislation referenced in this digest, along with information such as legislative committee analyses, are available on the Legislative Counsel of California website at leginfo.legislature.ca.gov.

The chaptered bills go into effect January 1, 2019, unless they contain an urgency clause, in which case they took effect immediately upon the Governor's signature. Alternatively, some measures specify their effective date.

For additional information regarding these measures, please contact the Office of Legislative Affairs at LegInquiry@dir.ca.gov or 510-286-7087.

**Prepared by:
Department of Industrial Relations
Director's Office
1515 Clay Street
Oakland, CA 94612**

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

Chaptered Assembly Bills

Signed:

[AB 235](#) (O'Donnell, Chapter 704, Statutes of 2018) Apprenticeship and preapprenticeship.

[AB 1565](#) (Thurmond, Chapter 528, Statutes of 2018) Labor-related liabilities: direct contractor.

[AB 1654](#) (Rubio, Chapter 529, Statutes of 2018) Labor Code Private Attorneys General Act of 2004: construction industry.

[AB 1749](#) (Daly, Chapter, Statutes of 2018) Workers' compensation: off-duty peace officer.

[AB 1809](#) (Committee on Budget, Chapter 33, Statutes of 2018) Higher education trailer bill.

[AB 1976](#) (Limón, Chapter 940, Statutes of 2018) Employment: lactation accommodation.

[AB 2031](#) (O'Donnell, Chapter 534, Statutes of 2018) Public contracts: school facility projects: bidding requirements.

[AB 2046](#) (Daly, Chapter 709, Statutes of 2018) Workers' compensation insurance fraud reporting.

[AB 2282](#) (Eggman, Chapter 127, Statutes of 2018) Salary history information.

[AB 2296](#) (Waldron, Chapter 389, Statutes of 2018) Licensed professional clinical counselors: licensed clinical social workers.

[AB 2334](#) (Thurmond, Chapter 238, Statutes of 2018) Occupational injuries and illness: employer reporting requirements: electronic submission.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

[AB 2338](#) (Levine, Chapter 967, Statutes of 2018) Talent agencies: education and training.

[AB 2358](#) (Carrillo, Chapter 675, Statutes of 2018) Apprenticeships: discrimination: prohibition.

[AB 2388](#) (Chu, Chapter 261, Statutes of 2018) Employment: minors.

[AB 2605](#) (Gipson, Chapter 584, Statutes of 2018) Rest breaks: petroleum facilities: safety-sensitive positions.

[AB 2610](#) (Aguiar-Curry, Chapter 148, Statutes of 2018) Employees: meal periods.

[AB 2705](#) (Holden, Chapter 323, Statutes of 2018) Contractors: violations.

[AB 2770](#) (Irwin, Chapter 82, Statutes of 2018) Privileged communications: communications by former employer: sexual harassment.

[AB 2799](#) (Jones-Sawyer, Chapter 971, Statutes of 2018) Adult-use cannabis and medicinal cannabis: license application: OSHA training.

[AB 3018](#) (Low, Chapter 882, Statutes of 2018) State contracts: skilled and trained workforce.

[AB 3231](#) (Gray, Chapter 682, Statutes of 2018) Employment: public works: apprenticeship.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

Chaptered Senate Bills

Signed:

[SB 877](#) (Committee on Budget and Fiscal Review, Chapter 455, Statutes of 2018) State Government.

[SB 880](#) (Pan, Chapter 730, Statutes of 2018) Workers' compensation.

[SB 913](#) (Hertzberg, Chapter 200, Statutes of 2018) Public works: City of Los Angeles: graffiti abatement.

[SB 1086](#) (Atkins, Chapter 734, Statutes of 2018) Workers' compensation: firefighters and peace officers.

[SB 1113](#) (Monning, Chapter 354, Statutes of 2018) Mental health in the workplace: voluntary standards.

[SB 1144](#) (Dodd, Chapter 897, Statutes of 2018) Enhanced industrial disability leave: State Bargaining Unit 8.

[SB 1252](#) (Pan, Chapter 464, Statutes of 2018) Wages: records: inspection and copying.

[SB 1402](#) (Lara, Chapter 702, Statutes of 2018) Labor contracting: customer liability.

[SB 1412](#) (Bradford, Chapter 987, Statutes of 2018) Applicants for employment: criminal history.

[SB 1428](#) (McGuire, Chapter 420, Statutes of 2018) Minors: employment: work permits. (Chaptered 9/15/2018)

[SB 1504](#) (Committee on Public Employment and Retirement, Chapter 3, Statutes of 2018) Public employment: retirement savings plans, employment conditions, and training.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

Chaptered Bills by Division

Note: Governor's signing messages appear where available

Department of Industrial Relations (DIR)

[AB 1654](#) (Rubio, Chapter 529, Statutes of 2018) Labor Code Private Attorneys General Act of 2004: construction industry.

This bill precludes unionized employees in the construction industry from pursuing claims under the Labor Code Private Attorneys General Act (PAGA) if their collective bargaining agreement does all the following: (1) provides for wages, hours of work, and conditions, including premium overtime pay and a base wage rate of at least 30 percent more than the state's minimum wage; (2) prohibits all Labor Code violations that are enforceable through PAGA; (3) has a binding grievance and arbitration procedure to redress those violations and authorizes the arbitrator to award any and all remedies available under the Labor Code, other than penalties payable to the Labor and Workforce Development Agency (LWDA); and (4) expressly waives PAGA requirements. The provisions of this bill will be repealed effective January 1, 2028.

[AB 1809](#) (Committee on Budget, Chapter 33, Statutes of 2018) Higher education trailer bill.

Existing law requires the Chancellor of the California Community Colleges to allocate funds for approved apprenticeship programs in good standing and, upon appropriation by the Legislature, to allocate funds solely for the purposes of reimbursing community colleges. This bill authorizes, under certain conditions, reimbursement for the attendance of apprentices enrolled in any class offered for community college credit by a community college in collaboration with an apprenticeship program sponsor.

[AB 2031](#) (O'Donnell, Chapter 534, Statutes of 2018) Public contracts: school facility projects: bidding requirements.

Under current law, AB 1565 (Fuentes, Chapter 808, Statutes of 2012), a local school district with an average daily attendance of 2,500 or more must prequalify bidders for construction projects exceeding one million dollars (\$1 million), if the district uses funds received under the Leroy F. Greene School Facilities Act of 1998 or any funds from any future school bond (Pub. Contract Code § 20111.6). This bill eliminates the statute's reporting mandate, which requires the Director of Industrial Relations to submit a report to the Legislature by January 1, 2018, comparing the number of Labor Code violations on school district projects before and after January 1, 2014, the effective date of section 20111.6. It also removes the statute's sunset date of January 1, 2019.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

AB 3231 (Gray, Chapter 682, Statutes of 2018) Employment: public works: apprenticeship.

The federal Labor Management Cooperation Act of 1978 established joint labor-management committees for the purpose of improving communication between representatives of labor and management and expanding and improving working relationships between workers and managers, among other things. State law authorizes these committees to bring civil suits against employers (contractors and subcontractors) for failure to pay prevailing wages to their employees. This bill authorizes a joint labor-management cooperation committee to bring a civil action against an employer that fails to provide certified payroll records as required under existing law. This bill also makes minor, technical amendments to Section 3073.5 of the Labor Code relating to annual reporting requirements of the California Apprenticeship Council and the Division of Apprenticeship Standards.

SB 1113 (Monning, Chapter 354, Statutes of 2018) Mental health in the workplace: voluntary standards.

This bill authorizes the Mental Health Services Oversight and Accountability Commission to establish a framework and voluntary standard for mental health in the workplace that serves to reduce mental health stigma, increase public, employee, and employer awareness of the recovery goals of the Mental Health Services Act, and provide California's employer community with guidance to put in place strategies and programs, determined by the commission, to support the mental health and wellness of employees. The bill requires the commission to consult with the Labor and Workforce Development Agency or its designee to develop the standard.

Division of Apprenticeship Standards (DAS)

AB 235 (O'Donnell, Chapter 704, Statutes of 2018) Apprenticeship and preapprenticeship.

This bill makes several significant changes in the state's apprenticeship structure in order to further the Governor's goal of increasing the number of apprentices and expanding apprenticeship opportunities in more industries. It establishes the Interagency Advisory Committee on Apprenticeship (IACA) within the Division of Apprenticeship Standards (DAS) and requires that committee to offer advice and guidance to the Administrator of Apprenticeship for the development of programs in industries outside of the building and construction trades. It also revises the provisions relating to the California Apprenticeship Council (CAC), removing its authority over apprenticeship programs in trades other than building and firefighting but continuing its

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

jurisdiction over the building and construction trades and firefighter-related programs. This bill proposes additional changes to the CAC and increases the membership of the council to include the chairperson of the California Firefighter Joint Apprenticeship Committee and removes the requirement that the council meet at the request of the director and aid the director in the formulation of policies with respect to regulation of apprentices. Further, this bill requires DAS to establish a pre-apprenticeship program for the purpose of establishing eligibility for any state programs and establishes standards and procedures in the approval of a pre-apprenticeship program. It also makes minor conforming changes to the Education and Labor Code.

AB 2358 (Carrillo, Chapter 675, Statutes of 2018) Apprenticeships: discrimination: prohibition.

This bill adds Labor Code section 3073.9, prohibiting discrimination in building and construction apprenticeship programs on the basis of race, religious creed, color, national origin, and other protected classes that is currently unlawful under federal and state laws enforced by the U.S. Department of Labor's Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing. It explicitly prohibits any such discrimination at all levels of the apprenticeship pipeline from outreach recruitment to job assignments and working conditions. This bill requires the apprenticeship program and DAS to protect apprentices and potential apprentices from harassment and discrimination, provides an avenue for filing a complaint with the Administrator of Apprenticeship, and states that the fact that an apprenticeship program fails to take affirmative steps to provide equal opportunity in apprenticeship is inadmissible in a private civil action as evidence of discrimination or of the failure to prevent discrimination or harassment.

Division of Labor Standards and Enforcement (DLSE)

AB 1565 (Thurmond, Chapter 528, Statutes of 2018) Labor-related liabilities: direct contractor.

This is a cleanup bill to address concerns raised by opponents regarding the meaning and application of Labor Code section 218.7(h), which was added to the Labor Code by AB 1701 (Thurmond, Chapter 804, Statutes of 2017). It repeals existing paragraph (h) of Labor Code section 218.7 (stating that the remedies available within this section were in addition to other remedies provided by law) to reduce confusion and resolve any ongoing disputes regarding its interpretation by interested stakeholders. AB 1565 also adds new requirements if a direct contractor or subcontractor seeks to withhold payments from a lower tier subcontractor because of the lower-tier subcontractor's

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

failure to provide the direct contractor or higher-tier subcontractor with specified payroll and compensation records.

AB 1976 (Limón, Chapter 940, Statutes of 2018) Employment: lactation accommodation.

The law requires every employer to provide a reasonable amount of break time to accommodate an employee who desires to express breast milk for her infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for her to express milk in private. This bill replaced the reference to "toilet stall" in Labor Code section 1031 with "bathroom" to align state statute more closely with federal law under the Affordable Care Act (ACA). The bill deems an employer to be in compliance with the requirement of providing a lactation location if the employer makes available a temporary lactation location that meets the specified conditions and makes other limited exceptions.

AB 2282 (Eggman, Chapter 127, Statutes of 2018) Salary history information.

Current law prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant, except in specified circumstances. Current law requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant applying for employment. This bill defines "pay scale," "reasonable request," and "applicant" for the purposes of these provisions.

AB 2338 (Levine, Chapter 967, Statutes of 2018) Talent agencies: education and training.

This bill creates new mandatory requirements for talent agent licensees related to providing adult artists with educational materials on sexual harassment, eating disorders, and nutritional information for talent agent licensees, as described. This bill also requires, prior to the issuance of an entertainment work permit to a minor age 14-17, that the minor and the minor's parent or legal guardian receive and complete training in sexual harassment prevention, retaliation, and reporting resources from a third-party vendor.

AB 2388 (Chu, Chapter 261, Statutes of 2018) Employment: minors.

Current law regulates the employment of minors in the entertainment industry and requires the written consent of the Labor Commissioner for a minor under 16 years old to take part in certain types of employment. Under the law, it is a crime to employ or for

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

a parent or guardian to permit the employment of a minor in violation of these provisions. The appearance of a minor in a radio or television broadcast is exempt if the minor does not receive compensation directly or indirectly, the engagement of the minor is limited to a single appearance lasting no more than one hour, and an admission fee is not charged for the radio or television broadcast. This bill expands the exemption to include digital broadcasts.

AB 2605 (Gipson, Chapter 584, Statutes of 2018) Rest breaks: petroleum facilities: safety-sensitive positions.

This bill created a new exemption for specified workers in safety-sensitive positions at petroleum facilities from the requirement that a rest break be “duty free,” as has been recently construed by the California Supreme Court (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257). Under this bill, for any rest or recovery period during which the employee was interrupted or was forced to miss, the employer is required to provide a makeup rest break or pay to the employee one additional hour of compensation at the employee’s regular rate of pay. This bill contains an urgency clause, meaning that it would take effect immediately.

AB 2610 (Aguiar-Curry, Chapter 148, Statutes of 2018) Employees: meal periods.

This bill creates a special meal period rule for commercial drivers employed by a motor carrier transporting nutrients and byproducts from a licensed commercial feed manufacturer to a customer located in a remote rural location. Drivers may take a meal period after six hours of work, if the regular rate of pay of the driver is at least one and a half times the state minimum wage and the driver receives overtime compensation in accordance with specific provisions of existing law.

AB 2705 (Holden, Chapter 323, Statutes of 2018) Contractors: violations.

The Contractors State License Law provides for the licensure and regulation of contractors by the Contractors State License Board (CSLB) under the Department of Consumer Affairs. Applicants for a contractor’s license, or licensees, must have on file a current and valid Certificate of Workers’ Compensation Insurance or Certification of Self-Insurance. Under current law, a violation of the workers’ compensation certificate requirement is a misdemeanor. Prosecution for violation of these provisions must commence within two years after commission of the offense. This bill would make the failure to secure the payment of compensation by any person not licensed by the CSLB and acting as a contractor a misdemeanor, a violation subject to a two-year statute of limitations.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

AB 2770 (Irwin, Chapter 82, Statutes of 2018) Privileged communications: communications by former employer: sexual harassment.

Under existing law, certain publications and communications are privileged and therefore protected from civil action. Those communications include specified communications concerning the job performance or qualifications of an applicant for employment that are made without malice by a current or former employer to a prospective employer. This bill expands those privileged communications to complaints of sexual harassment by an employee, without malice, to an employer based on credible evidence and communications between the employer and interested persons regarding a complaint of sexual harassment. It authorizes an employer to answer, without malice, whether the employer would rehire an employee and whether a decision not to rehire is based on the employer's determination that the former employee engaged in sexual harassment.

AB 3018 (Low, Chapter 882, Statutes of 2018) State contracts: skilled and trained workforce.

Under existing law, a public works contractor, bidder, or other entity must give a monthly report to the awarding body demonstrating compliance with requirements regarding a skilled and trained workforce. If a monthly report shows a lack of compliance, this bill requires the awarding body to forward a copy of the report to the Labor Commissioner for enforcement. Existing law requires that at least 30 percent of the skilled journeypersons employed on such contracts or projects be graduates of an apprenticeship program and increases this percentage by 10 percentage points annually through 2020 for certain occupations. This bill also clarifies that for work performed on or after January 1, 2018, only the minimum 30 percent skilled and trained workforce requirement continues to apply to the set of specified occupations exempted from the percentage increase timeline. The bill imposes civil penalties on contractors and subcontractors in the amount of \$5,000 per month of work performed in violation of the skilled and trained workforce requirements for the first offense and \$10,000 per month for a subsequent violation within a three-year period. Further, it makes a contractor or subcontractor who, with the intent to defraud, violates these requirements ineligible to bid on, be awarded, or perform work on a contract for a public works project. The bill requires the Labor Commissioner's Office to publish on its website a list of contractors who are ineligible under these provisions.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

SB 877 (Committee on Budget and Fiscal Review, Chapter 455, Statutes of 2018) State Government.

SB 877 is trailer bill that includes clean-up provisions to clarify some of the changes made in one of last year's trailer bills, SB 96 (Committee on Budget and Fiscal Review, Statutes of 2017, Chapter 28), which made numerous changes in the Division of Labor Standards Enforcement (DLSE or Labor Commissioner) public works enforcement and related contractor registration program. SB 96 created sanctions for awarding bodies that hire or permit unregistered contractors to work on public works projects to be enforced through civil citations issued by the Labor Commissioner pursuant to a new Labor Code section, 1773.3(e). This bill clarifies the changes introduced by SB 96 by specifying the applicable deadlines and procedures by which awarding bodies may appeal a citation. This bill also clarifies that awarding bodies have up to 30 days after the awarding of a contract, but no later than the last day on which a contractor has workers employed in a public work, to file notice of the project to the DIR in the event that the project falls under one of the listed public contract code "emergency" provisions. Under SB 96, the Labor Commissioner must issue a stop order against any unregistered contractor found to be engaged in the performance of work on a public works project. This bill requires that a contractor continue to pay any employee affected by the work stoppage as a result of a stop order his or her straight-time prevailing wage rate for such time lost, not exceeding 10 days. This bill adds a provision for a method of service of a public works stop order in the event that a contractor is not licensed by the Contractors State License Board or registered with the Secretary of State.

SB 913 (Hertzberg, Chapter 200, Statutes of 2018) Public works: City of Los Angeles: graffiti abatement.

This bill exempts graffiti abatement work performed pursuant to a contract between the City of Los Angeles and a nonprofit community-based organization if the work is performed by specified individuals from the requirement to pay a prevailing wage, until January 1, 2024.

SB 1252 (Pan, Chapter 464, Statutes of 2018) Wages: records: inspection and copying.

Under existing law, Labor Code section 226 provides that current and former employees have a right to inspect or copy their itemized wage statements upon reasonable request. This bill would amend section 226 to expressly provide that current and former employees have a right to inspect and *receive* a copy of their wage statements as provided under current law. This bill would also amend the penalty provision for failure to permit an employee to inspect or copy itemized statement records to apply to a

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

failure to receive a copy of those records. This bill declares that these changes do not constitute changes to the Labor Code, but are declaratory of existing law.

SB 1402 (Lara, Chapter 702, Statutes of 2018) Labor contracting: customer liability.

This bill requires the Division of Labor Standards Enforcement to establish and post on its website a list of port drayage motor carriers that have an unsatisfied final court judgment, tax assessment, or tax lien related to specified unlawful conduct, including unpaid wages, taxes, and expenses, failure to provide workers' compensation, and misclassification of an employee as an independent contractor. Under this bill, a customer who hires a port drayage motor carrier on the list is jointly liable with the motor carrier, or the carrier's successor, for unpaid wages, unreimbursed expenses, damages, and penalties. Joint liability does not apply to a customer with fewer than 25 workers, to customers contracting with a port drayage motor carrier with a collective bargaining agreement, as specified, and to existing contracts for a period not to exceed 90 business days after listing. This bill provides that no civil action for a violation or enforcement of this section shall be brought under the Private Attorneys General Act. Drayage companies must be notified before they are listed, and a process to be removed from the list when the carrier has satisfied the unpaid judgment is provided. Under SB 1402, drayage companies must notify their customers of the potential for joint and several liability. Customer or motor carriers are prohibited from taking any adverse action against a driver for providing notification of violations or filing a claim or civil action. Waiver of this bill's provisions is contrary to public policy, void, and unenforceable.

SB 1412 (Bradford, Chapter 987, Statutes of 2018) Applicants for employment: criminal history.

This bill clarifies existing law that permits an employer to ask an applicant for employment to disclose information concerning arrests and detentions that did not lead to a conviction or that were judicially dismissed. SB 1412 limits that permission to questions regarding particular crimes directly related to the position for which the applicant seeks employment. Under this bill, an employer, whether public or private, is able to ask questions regarding only criminal offenses that are proscribed as disqualifying for employment by federal law or regulation or state law. SB 1412 does not prohibit an employer required by state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history from complying with those requirements.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

[SB 1428](#) (McGuire, Chapter 420, Statutes of 2018) Minors: employment: work permits.

Existing law prohibits the employment of any minor under 18 years old without a permit issued by the proper education officers and establishes conditions for work permits based on a minor's age and relating to the type of work and the number of hours and periods of the year that a minor is authorized to work. A permit is not required for a minor who has graduated from a high school, has an equal amount of education in a private school or by private tuition, or who has been awarded a certificate of proficiency. This bill amends the Education Code to prohibit the denial of a work permit on the basis of a pupil's grades, grade point average, or school attendance if the pupil is applying for the work permit in order to participate in a government-administered employment and training program that will occur during the regular summer recess or vacation of the school that the pupil attends.

[SB 1504](#) (Committee on Public Employment and Retirement, Chapter 903, Statutes of 2018) Public employment: retirement savings plans, employment conditions, and training.

SB 1504 makes technical fixes to provisions of the Government Code administered by CalHR and technical changes to the state's deferred compensation program, Savings Plus, to make that program conform with federal tax law. The changes made to provisions in the Labor Code alter the timing requirements surrounding deferral of compensation into the next tax year for unused leave that is owed upon leaving state employment.

Division of Occupational Safety and Health (Cal/OSHA)

[AB 2334](#) (Thurmond, Chapter 538, Statutes of 2018) Occupational injuries and illness: employer reporting requirements: electronic submission.

AB 2334 is an omnibus bill that introduced multiple changes that affect how the state tracks injury and illness information within the workers' compensation and occupational safety and health jurisdictions. Specifically, it authorizes the Director of DIR to release certain data regarding public self-insured employers' workers' compensation programs, if the information publicized does not include individually identifiable claimant information. This bill also clarifies the applicable statute of limitations for violations relating to an employer's obligation to maintain a record of its employees' occupational injury and illness. Further, it requires Cal/OSHA to convene an advisory committee meeting within 120 days of determining that the federal Occupational Safety and Health Administration (OSHA) has eliminated or substantially diminished the requirement that

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

employers electronically submit to OSHA injury and illness data as required by the “Improve Tracking of Workplace Injuries and Illnesses” rule that was passed in May 2016. The advisory committee would be required to evaluate how to implement changes to protect the goals of federal OSHA’s May 2016 electronic reporting rule.

AB 2799 (Jones-Sawyer, Chapter 971, Statutes of 2018) Adult-use cannabis and medicinal cannabis: license application: OSHA training.

This bill requires applicants for a state license to conduct various business activities related to the production and sale of cannabis to provide a statement to the licensing authority that the applicant employs, or will employ within one year of receiving or renewing a license, an employee and a supervisor who has successfully completed a Cal/OSHA 30-hour general industry outreach course offered by a training provider that is authorized to provide the course by an OSHA Training Institute Education Center. Applicants with only one employee would be exempt from this requirement.

Division of Workers’ Compensation (DWC)

AB 1749 (Daly, Chapter 707, Statutes of 2018) Workers’ compensation: off-duty peace officer.

This bill makes three substantive changes to Labor Code section 3600.2. First, it adds punctuation to resolve a purported ambiguity in the statute, clarifying that California peace officers who sustain injuries while engaged in certain activities anywhere in the state of California, but who, at the time, were not acting under the immediate direction of their employer, are entitled to receive workers’ compensation benefits for their injuries. Second, it codifies the authority that public employers may accept liability for workers’ compensation benefits for an injury sustained by off-duty peace officers outside California while engaged in specified activities, if the employer determines that providing compensation serves the public purposes of the employer. Finally, the bill specifically extends this authority and resolves any potential statute of limitations concerns, to include claims filed by California peace officers who were injured while engaged in certain specified activities during the October 1, 2017, mass shooting in Las Vegas, Nevada.

AB 2046 (Daly, Chapter 709, Statutes of 2018) Workers’ compensation insurance fraud reporting.

This bill eliminates any ambiguity or hesitation regarding the sharing of insurance fraud investigation information upon request, in a confidential manner, by authorized state agencies to other authorized state agencies. It requires, rather than authorizes—as per

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

prior law—an authorized government agency to release information on a suspected workers' compensation insurance fraud investigation to other authorized government agencies upon request for investigation, prosecution, or fraud prevention purposes. This bill also requires government entities authorized to receive information from the Employment Development Department (EDD) to obtain written permission prior to sharing that information with other government authorities.

AB 2296 (Waldron, Chapter 389, Statutes of 2018) Licensed professional clinical counselors: licensed clinical social workers.

This bill expressly includes professional clinical counselors on the list of mental health providers under Labor Code section 3209.8 who can treat injured workers. Professional clinical counselors would be subject to the same statutory requirements that currently exist for clinical social workers and marriage and family therapists. They can treat injured workers referred by a physician or surgeon with the approval of the employer, as long as they are licensed under California state law and providing services within their scope of practice as defined by California law. However, like their counterparts, they are not authorized to determine disability for purposes of deciding the employee's eligibility for compensation.

SB 880 (Pan, Chapter 730, Statutes of 2018) Workers' compensation.

SB 880 amends Labor Code section 4651 to allow all employers to use prepaid debit cards to make all disability indemnity payments, ensuring that injured workers have immediate access to funds by providing an alternative to paper checks. The prepaid card must meet certain requirements, including access to in-network teller machines, allowing withdrawal of the entire balance without incurring fees, and allowing point-of-sale purchases without fees. This measure will allow injured workers instant access to funds and make it easier for low-wage workers who may not have bank accounts to access their disability payments.

SB 1086 (Atkins, Chapter 734, Statutes of 2018) Workers' compensation: firefighters and peace officers.

Existing law generally prohibits the commencement of a proceeding to collect workers' compensation benefits more than one year after the date of death or more than 240 weeks from the date of injury. In 2014, AB 1035 (Pérez, Chapter 15, Statutes of 2014) added Labor Code section 5406.7, which created an exception for dependents of deceased peace officers and firefighters, allowing them to commence proceedings to collect death benefits no later than 420 weeks from the date of injury and not to exceed one year after the date of death for certain injuries. AB 1035 provided this exception to

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

sunset January 1, 2019. This bill repeals the sunset provision and allows this exemption to continue indefinitely. This provision applies only to specified injuries/conditions causing death, including cancer, tuberculosis, blood-borne infectious diseases, or methicillin-resistant *Staphylococcus aureus* skin infections, and only to specified deceased public safety personnel, including active law enforcement officers and firefighters (and prison guards, in the case of tuberculosis).

SB 1144 (Dodd, Chapter 897, Statutes of 2018) Enhanced industrial disability leave: State Bargaining Unit 8.

Existing law provides an injured employee with temporary disability (TD) benefits to partially offset wage loss if the injured worker is unable to work because of a work-related injury or illness. However, certain eligible public employees who incur a job-related injury or illness are entitled to a disability leave for up to one year, without loss of salary, in lieu of TD benefits. Members of State Bargaining Unit 8 (BU 8) who are temporarily disabled for more than 22 consecutive days are granted industrial disability leave (IDL) benefits based on their net salary. These BU 8 employees may receive this benefit for a period not exceeding 52 weeks or until the injury is declared permanent, whichever is earlier. If the BU 8 employee's injuries are burn related, the employee may receive the IDL benefit for up to 156 weeks or until the injury is declared permanent, whichever is earlier. This bill eliminates the requirement that an employee of BU 8 be temporarily disabled for a period that exceeds 22 consecutive days to qualify for an enhanced industrial disability leave (EIDL) benefit. The bill requires that the EIDL benefit be equivalent to the injured employee's net salary, including any salary increases the employee would have received during his or her leave. Additionally, this bill clarifies that the injury or illness be declared not only permanent but also stationary.

STATE OF CALIFORNIA
 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
 Legislative Digest 2018

Table of Amended Labor Code Sections

Note: All sections reference Labor Code (unless otherwise specified)

Bill	Labor Code Section
<u>AB 235</u>	Amends Sections 8151, 45263, 51766, 79140, 79144, 79146, 79148, 79149, 79149.2, 81703, 88083, and 88600 of, and amends the heading of Article 3 (commencing with Section 79140) of Chapter 9 of Part 48 of Division 7 of Title 3 of, the Education Code, amends Section 12813 of, and repeals Section 6531 of, the Government Code, amends Section 25536.7 of the Health and Safety Code, and amends Sections 1777.5, 2699.5, 3070, 3071, 3073, 3073.1, 3073.3, 3073.5, 3074, 3075, 3076, 3076.3, 3077, 3078, 3079, 3080, 3081, 3082, 3083, 3084, 3085, 3086, 3089, and 3093 of, amends the heading of Chapter 4 (commencing with Section 3070) of Division 3 of, adds Sections 3071.5, 3073.6, 3073.7, 3078.5, 3080.5, and 3100 to, adds the heading of Article 1 (commencing with Section 3070), the heading of Article 2 (commencing with Section 3075), the heading of Article 3 (commencing with Section 3093), and the heading of Article 4 (commencing with Section 3100) to Chapter 4 of Division 3 of, and repeals Sections 3095, 3097, and 3098 of, the Labor Code
<u>AB 1565</u>	Amends Section 218.7
<u>AB 1654</u>	Adds and repeals Section 2699.6
<u>AB 1749</u>	Amends Section 3600.2
<u>AB 1809</u>	Amends Sections 8152, 8154, 19104.5, 52523, 66021.1, 66027.8, 68075.6, 69432, 69433.6, 69435.3, 70023, 70900, 70901, 72506, 76004, 76300, 76350, 78401, 79149.3, 79149.5, 82542, 84040.5, 84750.5, 84751, 84810.5, 84900, 84901, 84906, 84913, 84916, 99151, 99152, 99153, 99154, and 99162 of, amends the heading of Article 9 (commencing with Section 84900) of Chapter 5 of Part 50 of Division 7 of Title 3 of, amends and repeals Sections 84750.6, 84750.7, and 88912.5 of, to add Sections 66749.6, 66749.7, 78222, 79148.1, 79149.7, 84750.4, and 84750.41 to, adds Article 10 (commencing with Section 54800) to Chapter 9 of Part 29 of Division 4 of Title 2 of, adds Part 46.5 (commencing with Section 75000), Part 52.7 (commencing with Section 88670), and Part 54.82 (commencing with Section 88930) to Division 7 of Title 3 of, to add Article 2.5 (commencing with Section 92010) to Chapter 1 of Part 57 of Division 9 of Title 3 of, adds and repeals Section 89290.5

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

	of, repeals Sections 88910, 88912, and 88913 of, repeals and adds Section 79149.1 of, the Education Code, adds Sections 22874.7 and 22958.4, and adds Article 7 (commencing with Section 65059.1) to Chapter 1.5 of Division 1 of Title 7 of, the Government Code, amends Section 33492.78 of the Health and Safety Code, amends Section 95 of the Revenue and Taxation Code, adds Section 18928 to the Welfare and Institutions Code, and amends the Budget Act of 2017 by amending Item 6870-101-0001 of Section 2.00
<u>AB 1976</u>	Amends Section 1031
<u>AB 2031</u>	Amends Section 20111.6 of the Public Contract Code
<u>AB 2046</u>	Amends Sections 1872.83 and 1877.3 of the Insurance Code
<u>AB 2282</u>	Amend Sections 432.3 and 1197.5
<u>AB 2296</u>	Amends Section 3209.8
<u>AB 2334</u>	Amends Sections 138.7, 3702.2, and 6317 of, and to add Sections 6410.1 and 6410.2
<u>AB 2338</u>	Adds Article 4 (commencing with Section 1700.50) to Chapter 4 of Part 6 of Division 2
<u>AB 2358</u>	Adds Section 3073.9
<u>AB 2388</u>	Amends Section 1310
<u>AB 2605</u>	Adds and repeals Section 226.75
<u>AB 2610</u>	Amends Section 512
<u>AB 2705</u>	Amends Section 7126 of the Business and Professions Code
<u>AB 2770</u>	Amends Section 47 of the Civil Code
<u>AB 2799</u>	Amends Section 26051.5 of the Business and Professions Code
<u>AB 3018</u>	Amends Sections 2601 and 2602 of, and adds Section 2603 to, the Public Contract Code
<u>AB 3231</u>	Amends Sections 1771.2 and 3073.5
<u>SB 877</u>	Amends Sections 1771.1 and 1773.3
<u>SB 880</u>	Amends, repeals, and adds Section 4651
<u>SB 913</u>	Adds and repeals Section 1720.5
<u>SB 1086</u>	Amends Section 5406.7
<u>SB 1113</u>	Amends Section 5845 of the Welfare and Institutions Code
<u>SB 1144</u>	Amends Section 19871.3 of the Government Code
<u>SB 1252</u>	Amends Section 226
<u>SB 1402</u>	Adds Section 2810.4
<u>SB 1412</u>	Amends Section 432.7
<u>SB 1428</u>	Adds Section 49120 to the Education Code

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

SB 1504	Amends Section 19218 of the Food and Agricultural Code, amends Sections 6276.14, 6276.34, 19993, 19993.05, 19995.4, 19999.5, 20677.5, 20677.6, 20677.7, 20677.71, 20677.8, 20677.9, 20677.91, 20677.95, 20681, and 22877 of the Government Code, amends Section 12693.63 of the Insurance Code, amends Sections 201 and 202 of the Labor Code, amends Section 13600 of the Penal Code, and amends Section 14021.31 of the Welfare and Institutions Code
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STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

APPENDIX A: Vetoed Bills

Vetoed Assembly Bills:

[AB 479](#) (Gonzalez Fletcher) Workers' compensation: permanent disability apportionment.

[AB 553](#) (Daly) Workers' compensation: return-to-work program.

[AB 1080](#) (Gonzalez Fletcher) Public contracts: bid preferences: employee health care coverage.

[AB 1697](#) (Committee on Insurance) Workers' compensation.

[AB 2079](#) (Gonzalez Fletcher) Janitorial workers: sexual violence and harassment prevention training.

[AB 2314](#) (Ting) Private employment: domestic workers.

[AB 2317](#) (Eggman) Whistleblower protection: county patients' rights advocates.

[AB 2496](#) (Gonzalez Fletcher) Janitorial employees: employment status: burden of proof.

[AB 2732](#) (Gonzalez Fletcher) Employment: unfair immigration-related practices: janitorial workers: sexual violence and harassment prevention training.

[AB 2963](#) (Kalra) Worker safety: blood lead levels: reporting.

[AB 3080](#) (Gonzalez Fletcher) Employment discrimination: enforcement.

[AB 3081](#) (Gonzalez Fletcher) Employment: sexual harassment.

[AB 3179](#) (Salas) State agencies: bilingual services.

Vetoed Senate Bills:

[SB 715](#) (Delgado) Vehicular air pollution: regulations: exemption.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

[SB 899](#) (Pan) Workers' compensation.

[SB 926](#) (Skinner) CalWORKs and CalFresh: work requirements.

[SB 937](#) (Wiener) Lactation accommodation.

[SB 1223](#) (Galgiani) Construction industry: discrimination and harassment prevention policy.

VETOED BILLS BY DIVISION

Department of Industrial Relations (DIR)

AB 1080 (Gonzalez Fletcher) Public contracts: bid preferences: employee health care coverage.

This bill would have added new sections 2030-2036 to the Public Contract Code to require a state agency awarding certain types of contracts, including public works contracts, to provide a 5 percent bid preference to a bidder or bidder's subcontractor if, during the 12-month period immediately preceding submission of the bid, the bidder's or subcontractor's employees were covered by "credible health-care coverage," as defined, during the time that they were employed. The bill would have also required employees of winning bidders and their subcontractors to be covered by credible health-care coverage for the duration of their employment under the public contract and for any period of continuous employment up to one year after completion of the contract. This bill would have allowed a bidder to submit bid preference claim statements on a form developed jointly by the Department of General Services and the DIR, to certify qualification for the bid preference.

Governor's Veto Message: I am returning Assembly Bill 1080 without my signature. This bill would provide a bid preference to a bidder providing health-care coverage to employees. While I appreciate the author's intent to promote access to health care, I am concerned about the impact on small businesses competing for state contracts. Furthermore, a new bid preference for public works and other services may ultimately result in the state paying more for contracts.

AB 3179 (Salas) State agencies: bilingual services.

The Dymally-Alatorre Bilingual Services Act (Government Code sections 7290-7299.8) requires certain state agencies to translate their materials and services for non-English-speaking persons if those individuals comprise a "substantial number," defined as 5 percent or more, of its total population served by any local office. This bill would have required agencies to provide language access in the form of bilingual employees and translated materials to non-English speakers if they constitute 3 percent of the population served.

Governor's Veto Message: I am returning Assembly Bill 3179 without my signature. This bill would require state agencies to provide access to bilingual employees and translated materials for non-English speakers if those individuals constitute 3% of the

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

population served. This bill has a potential cost of \$77 million a year and is more properly considered as part of the budget process.

SB 926 (Skinner) CalWORKs and CalFresh: work requirements.

Under current law, the California Work Opportunity and Responsibility to Kids (CalWORKs) program, administered through counties, provides cash aid and benefits to qualified low-income families and individuals. A CalWORKs recipient, unless exempt, must participate in welfare-to-work activities in order to receive benefits. Existing law prohibits sanctions for a participant's failure or refusal to comply with program requirements for reasons such as discrimination, if working conditions are in violation of health and safety standards, or if a schedule exceeds the hours of work customary to the occupation. This bill would have prohibited sanctions for a CalWORKs benefit recipient's failure or refusal to comply with welfare-to-work activities if his or her scheduled hours are or would be so unpredictable as not to allow a recipient to anticipate compliance. This bill would have also prohibited sanctions if the recipient self-certifies that employment or an offer of employment fails to comply with a recipient's rights under specified provisions in the Labor Code. This bill would have also required the county human services agency administering benefits, upon learning from an applicant or a recipient about a potential violation of his or her welfare-to-work obligations, to inform him or her of available rights and remedies under specified workplace laws.

Governor's Veto Message: I am returning Senate Bill 926 without my signature. This bill defines certain good-cause exemptions for CalWORKs and CalFresh recipients who could otherwise be sanctioned for failing to work. This bill is unnecessary because existing law provides county welfare departments with broad authority to grant good-cause exemptions from work requirements to ensure recipients are not unjustly penalized.

Division of Apprenticeship Standards (DAS)

SB 715 (Delgado) Vehicular air pollution: regulations: exemption.

This bill would have required the State Air Resources Board (ARB) to exempt a vehicle owned or operated by a state-registered nonprofit apprenticeship training program from any regulation to reduce emissions of diesel particulate matter, nitrogen oxides, and other kinds of air pollutants from in-use, off-road, diesel-fueled vehicles.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

Governor's Veto Message: I am returning Senate Bill 715 without my signature. This bill requires the California Air Resources Board to exempt off-road diesel vehicles owned or operated by state-registered nonprofit apprenticeship training programs from any regulation that reduces emissions of diesel particulate matter, oxides of nitrogen, and other criteria pollutants. This exemption could cause a shortfall in mandated air pollution emissions reductions, which may require us to revise our State Implementation Plan to remain in Compliance with the federal Clean Air Act. Working with the federal administration to revise our State Implementation Plan in a time of pressing air quality challenges is difficult and unwise. As Such, I direct the Board to work with the author and sponsors of this bill on an administrative solution that minimizes adverse impacts on apprenticeship programs, yet also protects air quality.

Division of Labor Standards and Enforcement (DLSE)

AB 2079 (Gonzalez Fletcher) Janitorial workers: sexual violence and harassment prevention training.

In 2016 Governor Brown signed AB 1978 (Gonzalez, Ch. 373, Statutes of 2016), which created a property services employer registration program, requiring all employers that employ one or more workers who provide janitorial services pursuant to a contract, subcontract, or franchise agreement to register annually with the Labor Commissioner beginning July 1, 2018. The registration program established numerous requirements, including that all janitorial employers and employees complete a biennial in-person sexual violence and harassment prevention training course. This bill would have made several changes in the property services registration program, including: (1) require additional information regarding subcontractor and franchise service agreements upon issuance or renewal of a registration; (2) create an advisory committee to develop requirements for qualified organizations and peer trainers; (3) require the Labor Commissioner to create and maintain, and employers to use as the exclusive source of training providers for non-supervisors, a list of qualified training organizations; (4) create additional recording and reporting requirements; and (5) bar applications or renewals of a registration if the employer has not fully paid a judgment for violation of Government Code section 12940 due an employee or former employee for a business that requires registration for the property service workers program.

Governor's Veto Message: I am returning Assembly Bill 2079 without my signature. This bill would make numerous changes to the Property Service Worker Protection Act established by AB 1978 (Gonzalez, Ch.373, Stats. of 2016). The Labor Commissioner just recently finished implementing the initial registration requirement and is in the

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

process of promulgating regulations to create the sexual harassment and violence prevention training program required by the Act. The Author and sponsors of this measure were ahead of their time when they created this program, the first of its kind in the country, two years ago. The Labor Commissioner is still in the early stages of ensuring that this program is successful and lives up to its promise of protecting janitorial workers. We should allow full implementation of this program before proposing significant changes.

AB 2314 (Ting) Private employment: domestic workers.

Existing law establishes the Domestic Worker Bill of Rights, entitling domestic workers to overtime compensation. This bill would have established a Domestic Work Enforcement Pilot Program in collaboration with qualified organizations, to increase the capacity and expertise of the Division of Labor Standards Enforcement (DLSE) to improve education and enforcement of labor standards in the domestic work industry. The pilot program would have been required to address the education of employees and employers regarding the minimum wage, overtime, sick leave, recordkeeping, retaliation, and wage adjudication. The bill would have required qualified organizations collaborating with the Division in connection with the program to issue reports and meet quarterly with the Division to review the implementation and success of the program.

Governor's Veto Message: I am returning Assembly Bill 2314 without my signature. This bill would create a Domestic Work Enforcement Pilot Program in an effort to provide resources, education, and training regarding labor standards in the domestic work industry for both employees and employers. The author of this measure added a provision to the 2018-19 Budget Act that requires the Division of Labor Standards Enforcement to provide a report, by July 1, 2019, on the labor enforcement actions that have been taken by the Division to date, what barriers exist that may prevent greater enforcement, and to provide recommendations on improving employer compliance through outreach and education. Given the wide variety of domestic work and the sparse information available, I believe the legislature should wait for the findings of this report, and then conduct thorough and thoughtful hearings on how families can take care of their loved ones in a fair and affordable manner. Keeping a family member out of a nursing home and in a place where they have lived for years is a profoundly moral and social good. I urge the legislature to tread carefully when adding more enforcement rules or costly mandates on ordinary families trying to do their best for their infirmed or aging loved ones.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

AB 2317 (Eggman) Whistleblower protection: county patients' rights advocates.

Existing law provides whistleblower protections to an employee and prohibit an employer, or any person acting on behalf of an employer, from preventing or retaliating against an employee for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of a law. This bill would have extended these protections to county patients' rights advocates, including those classified as independent contractors and other types of entities in Welfare and Institutions Code section 5550.

Governor's Veto Message: I am returning Assembly Bill 2317 without my signature.

This bill would extend whistleblower protections afforded to employees to patients' rights advocates regardless of whether they are an employee, an independent contractor, or a business entity. While I am supportive of the larger policy goal of this bill, to protect the work of patient rights advocates, this is not the appropriate framework. The bill would expand the Labor Commissioner's jurisdiction beyond the typical employer-employee relationship into larger contract disputes between independent contractors and local governments. I do not believe such a broad change in law is warranted when there is limited evidence of a problem.

AB 2496 (Gonzalez Fletcher) Janitorial employees: employment status: burden of proof.

Existing law requires property service employers to register with DLSE and to maintain specified records and provide, among other things, specified training for their employees. Existing law creates a rebuttable presumption that a worker performing services for which a contractor's state license is required is an employee, rather than an independent contractor, and provides criteria to determine whether the worker is an employee or an independent contractor. This bill would have expanded those requirements to provide that the failure to hold a valid property service employer registration when required makes one an employee. Further, it would have provided a rebuttable presumption that workers of someone who should hold a valid property services registration are employees, rather than independent contractors. In order to overcome the presumption, a multifactor test would apply.

Governor's Veto Message: I am returning Assembly Bill 2496 without my signature.

This bill would establish in statute the presumption that persons who perform services for janitorial employers are employees, rather than independent contractors. I share the Author's concern about protecting the most vulnerable workers as well as the general

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

concern about providing clarity regarding worker classification. The California Supreme Court recently issued a significant decision establishing a new test to determine whether a worker is properly classified as an employee or an independent contractor, *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. The Administration and the Legislature are still reviewing this decision, and any statutory changes to such tests would be premature.

AB 2732 (Gonzalez Fletcher) Employment: unfair immigration-related practices: janitorial workers: sexual violence and harassment prevention training.

This bill would have made it unlawful for an employer to knowingly destroy, conceal, remove, confiscate, or possess any immigration or identification documents of another person to engage in human trafficking or coercive labor practices and would impose specified civil and criminal penalties for a violation. The bill would have also required the employer to post a notice specifying the rights of an employee to maintain custody and control of their own immigration documents; the notice would have had to include additional information and provide the contact information for the National Human Trafficking Hotline. Under this bill DIR would have been required to develop and make available for download by employers a “Worker’s Bill of Rights” to be provided to employees and available in the twelve languages most commonly spoken in California by non–English-speaking people or people with limited English-language proficiency.

In addition, this bill included provisions to clarify the Property Service Worker Protection Act established by AB 1978 (Gonzalez, Ch. 373, Statutes of 2016), which requires janitorial service employers to register annually with DLSE and, beginning on January 1, 2020, requires employers to conduct a biennial sexual violence and harassment prevention training program for employees as a condition of registration. This bill would have amended the definition of “employer” and required employers to provide sexual violence and harassment prevention training to all covered workers, not just employees. This bill would also have specified that records must be kept for covered workers, required that applicants for registration and renewal must certify to the Labor Commissioner that the required training had been provided, and made technical amendments to the successor liability provision.

Finally, because double-jointing language was added to avoid chaptering issues with this bill and AB 2079, this bill would have incorporated additional changes in the janitorial registration and training program proposed by AB 2079, including: (1) requiring additional information regarding subcontractor and franchise service agreements in order to obtain or renew a registration; (2) creating an advisory committee to develop

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

requirements for qualified organizations and peer trainers that employers must use to provide the training required; (3) requiring DLSE to adopt requirements for the qualified organizations and peer trainers by January 1, 2020; (4) requiring employers to use the training content created by the advisory committee; (5) requiring the Director to create and maintain, and employers to use as the exclusive source of training providers, a list of qualified training organizations; and (6) creating additional recording and reporting requirements. These changes would have only become operative if both bills had been enacted, and this bill had been enacted last.

Governor's Veto Message: I am returning AB 2732 without my signature. This bill makes it unlawful—punishable by civil and criminal penalties—for an employer to knowingly destroy, conceal, remove, confiscate, or possess any immigration-related documents for human trafficking or any coercive labor practice. The bill also requires employers to provide a written "Worker's Bill of Rights" to every employee in the State of California. Labor trafficking is a problem in our state and the provision of this bill that prohibits employers from withholding immigration documents from workers is very appropriate. However, there is additional language that requires every single employer to provide to every single employee—millions in the state—a new and detailed list of rights related to labor trafficking. This goes too far. The vast majority of California employers have nothing to do with labor trafficking, so this mandate as applied to them is burdensome and unwarranted.

AB 3080 (Gonzalez Fletcher) Employment discrimination: enforcement.

This bill would have made it unlawful for a person to prohibit an employee or independent contractor from disclosing to any person an instance of sexual harassment as a condition of employment, continued employment, the receipt of any employment-related benefit, or contractual agreement. This bill would have deemed an agreement that requires employees to opt out of a waiver or take any affirmative action to preserve their rights a condition of employment. This bill would have made it unlawful to condition an offer of employment or continuing employment on the waiver of any legal right, penalty, remedy, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or the Labor Code. The bill would have made it unlawful for an employer to retaliate against or terminate any employee or applicant for employment because of their refusal to consent to such a waiver of any right. This bill would have also made violations of these prohibitions relating to sexual harassment and waivers unlawful employment practices under FEHA.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

Governor's Veto Message: I am returning Assembly Bill 3080 without my signature. This bill prohibits an applicant for employment or employee from being required to waive his or her right to a judicial forum as a condition of employment or continued employment. In my veto message of a similar bill in 2015, I referred to recent court decisions that invalidated state policies which unduly impeded arbitration. I also wanted to see how future United States Supreme Court decisions developed before endorsing a broad ban on mandatory arbitration agreements. The direction from the Supreme Court since my earlier veto has been clear—states must follow the Federal Arbitration Act and the Supreme Court's interpretation of the Act. *DIRECTV, Inc. v. Imburgia*, 136 S.Ct. 463, 468 (2015). This bill is based on a theory that the Act only governs the enforcement and not the initial formation of arbitration agreements and therefore California is free to prevent mandatory arbitration agreements from being formed at the outset. The Supreme Court has made it explicit this approach is impermissible. In 2017 Justice Kagan, an appointee of President Obama, writing on behalf of a near-unanimous Supreme Court, clearly rejected the assertion that the Federal Arbitration Act has no application to contract formation issues: "By its terms, . . . the Act cares not only about the "enforce[ment]" of arbitration agreements, but also about their initial "valid[ity]"-that is, about what it takes to enter into them. Or said otherwise: A rule selectively finding arbitration contracts invalid because improperly formed fares no better under the Act than a rule selectively refusing to enforce those agreements once properly made. Precedent confirms that point." *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421, 1428 (2017). Since this bill plainly violates federal law, I cannot sign this measure.

AB 3081 (Gonzalez Fletcher) Employment: sexual harassment.

Existing law prohibits an employer from discharging, or in any manner discriminating or retaliating against, an employee because of the employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of it. Existing law authorizes an employee to file a complaint with DLSE for a violation of these prohibitions within one year from the date of occurrence of the violation. This bill would have also prohibited an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment. The bill would have established a rebuttable presumption of unlawful retaliation based on the employee's status as a victim of domestic violence, sexual assault, sexual harassment, or stalking if an employer takes specific actions within 30 days after the date that the victim provides notice to the employer or the employer has actual knowledge of the status. This bill also proposed changes to FEHA in the

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

Government Code providing that a client employer must share with a labor contractor all civil legal responsibility and civil liability for harassment as described in FEHA. This bill would have also prohibited a client employer from shifting to the labor contractor any legal duties or liabilities of Division 5 of the Labor Code. This bill would have required workers, or their representative to notify the client employer of harassment violations at least 30 days before filing a civil action against a client employer.

Governor's Veto Message: I am returning Assembly Bill 3081 without my signature. This bill creates a new, ill-defined standard of joint liability between labor contractors and client employers, prohibits both entities from retaliating against an employee who has filed a harassment claim, and establishes a 30-day notice requirement before certain workers can file a civil action against a client employer. Most of the provisions in this bill are contained in current law and are therefore unnecessary. To the extent there are new provisions, they are confusing.

SB 937 (Wiener) Lactation accommodation.

Under existing law, employers must provide break time to employees for the purpose of expressing breast milk. This bill would have expanded existing requirements to include prescribed features for the lactation room, including close proximity to the employee's workspace. Among other things, the bill would have required an employer to develop and implement a lactation accommodation policy that included an employee's right to request lactation accommodation and maintain records of those requests for three years. The bill would have deemed denial of reasonable break time or adequate space to express milk a failure to provide a rest period in accordance with state law and provided that an employee could file a wage claim for such a violation. The bill would have required DLSE to develop a model lactation accommodation request form and to make the form available for download from its website.

Governor's Veto Message: I am returning Senate Bill 937 without my signature. This bill requires employers to provide a space that meets specified standards for employees with a desire to express breast milk in private. I have signed AB 1976, which furthers the state's ongoing efforts to support working mothers and their families. Therefore, this bill is not necessary.

SB 1223 (Galgiani) Construction industry: discrimination and harassment prevention policy.

This bill would have required DLSE to develop recommendations for a harassment and discrimination prevention policy and training standard specific to the construction

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

industry and specified that the training standard should focus on preventing harassment and discrimination on the basis of sex, race, national origin, and other categories protected under the California Fair Employment and Housing Act (Government Code section 12940). This bill would have required the Director of DIR to convene an advisory committee, no later than March 1, 2019, with specified representatives, to recommend minimum standards for the harassment and discrimination prevention policy and training standard. This bill would have required the Labor Commissioner to provide a report to the Legislature by January 1, 2020, with recommendations for the harassment and discrimination prevention policy and training standard and recommendations for legislative implementation of such a standard.

Governor's Veto Message: I am returning Senate Bill 1223 without my signature. This bill would require the Department of Industrial Relations to convene an advisory committee to recommend minimum standards for a harassment and discrimination prevention policy and training program specific to the construction industry, and to provide a report to the Legislature with recommendations for implementation. The Department of Fair Employment and Housing is charged with enforcing the provisions of the Fair Employment and Housing Act, including those pertaining to preventing and remedying sexual harassment and discrimination. That Department is also charged with enforcing the state's sexual harassment training requirements. As such, this proposal would be better placed at the Department of Fair Employment and Housing and not with the Labor Commissioner.

Division of Occupational Safety and Health (Cal/OSHA)

AB 2963 (Kalra) Worker safety: blood lead levels: reporting.

This bill would have required the California Department of Public Health to report to the Division of Occupational Safety and Health (Cal/OSHA), within five business days, any instance in which a worker's blood lead level is at or above 25 micrograms per deciliter ($\mu\text{g}/\text{dL}$). Reports received by Cal/OSHA would have triggered an investigation within three working days. The bill would have required Cal/OSHA to make information concerning any citations and fines imposed as a result of completed investigations publicly available on an annual basis.

Governor's Veto Message: This bill would increase reporting of worker lead exposure by the California Department of Public Health and require the Division of Occupational Safety and Health to undertake an investigation within three working days. It would also require the Division to make the information on resulting fines and citations publicly

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

available. I agree with the author that lead exposure is an important public health issue and should be taken seriously. In this case, the Department of Public Health already works collaboratively with employers to reduce worker exposure to lead and refers employers to the Division for enforcement, if needed, on a case-by-case basis. This bill would erode that collaborative approach, and require the Division to take immediate enforcement action upon referral. The Division is in the process of revising and updating the regulations that establish a permissible lead exposure level for workers and the level at which immediate intervention is needed. I believe we should wait for that work to conclude.

Division of Workers' Compensation (DWC)

AB 479 (Gonzalez Fletcher) Workers' compensation: permanent disability apportionment.

In assessing permanent disability in workers' compensation cases, physicians are required to rate the disability according to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides). Assembly Bill 479 would have amended Labor Code section 4660.1 to require physicians to consider a specific list of impairments that may result from breast cancer when assessing an injured worker's claim, including: (1) the presence or absence of the organ; (2) any loss of function of the upper extremities, including loss of the range of motion, neurological deficits, and lymphedema; (3) skin disfigurement; (4) pain; and (5) other impairments caused by the breast cancer, lack of organ, or treatment related to the injury. Additionally AB 479 would have prohibited physicians from considering "childbearing age" as a determining factor when determining a person's impairment rating related to breast cancer.

Governor's Veto Message: I am returning Assembly Bill 479 without my signature. This bill would require physicians to consider a specific list of impairments when determining a worker's disability for the purposes of workers' compensation when that worker suffers from breast cancer. This proposal is similar to three previous measures that I have vetoed, Assembly Bill 570 in 2017, Assembly Bill 1643 in 2016, and Assembly 305 in 2015. This bill and its predecessors have repeatedly singled out specific conditions and proposed a special set of rules that apply to them. This would result in an even more complex workers' compensation system that would essentially be "disease by statute," which would ultimately burden injured workers seeking quick resolution to their claims. Policy questions about the adequacy of the State's workers' compensation system are best addressed through empirically based research and

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

analysis. Therefore, I am directing the Division of Workers' Compensation Administrative Director, in consultation with the Commission on Health and Safety and Workers' Compensation, to contract with an outside independent research organization to undertake an evidenced based evaluation of the issue. Specifically, the Administrative Director should review the following: 1. Do the standards for determining impairment due to occupational injury or illness accurately reflect the level of impairment caused by industrial cancer? 2. Study and compare the differences between the fifth and sixth editions of the American Medical Association Guides with respect to determining impairment resulting from industrial cancer. 3. Do the standards for determining impairment resulting from industrial cancer exhibit bias based on immutable characteristics such as gender, race or ethnicity? Every stakeholder in the workers' compensation system, but specifically the injured workers directly affected, has a vested interest in a comprehensive response to the issues raised by this series of bills. I am directing the Administrative Director to report on these questions by March 1, 2020 in order to inform the Legislature and key stakeholders on how best to address the important issues raised by this bill.

AB 553 (Daly) Workers' compensation: return-to-work program.

Existing law within the workers' compensation system creates a return-to-work (RTW) program to be administered by the Director of DIR, with \$120 million in funding annually, for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their lost earnings. Beginning January 1, 2020, this bill would have required the Director, as administrator of the Return-to-Work Supplement (RTWS) program, to distribute, by April 1 of each year, the full \$120 million RTWS fund to specified injured workers on the basis of equal shares for each eligible worker. This bill stated that a worker who is eligible to receive a supplemental job displacement benefit (SJDB) pursuant to Labor Code section 4658.7 is eligible to receive a payment under this section and authorized the Director to establish additional bases of eligibility. This bill would have prohibited anyone, including an attorney, from collecting a fee or a commission for providing assistance to a worker applying for the RTWS payment. This bill also struck down existing language that applies this section only to injuries sustained on or after January 1, 2013.

Governor's Veto Message: I am returning Assembly Bill 553 without my signature. This bill requires DIR to completely disburse \$120 million annually from the Workers' Compensation RTW fund to eligible injured workers. The RTW program began in 2015 and is relatively new. I am concerned that this measure proposes sweeping revisions in the RTW program that are premature. The program's funds will likely be spent in full in

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

the coming fiscal year. Let's see the progress of that effort before making additional changes in the program.

AB 1697 (Committee on Insurance) Workers' compensation.

This bill would have established an antifraud unit in DWC with specific statutory mandates. This bill would have specified that the antifraud unit would, among other things, serve as the point of contact between DWC and other agencies and entities engaged in antifraud activities, as well as require the unit to ensure data sharing among agencies and that the unit research fraud in the workers' compensation system. This bill would have required the antifraud unit to develop and implement, by July 1, 2019, data analytic processes to identify the sources of previously unknown fraud and the magnitude of known or suspected fraud as well as to create written policies and procedures to guide the unit's data analytic efforts. This bill would have also required the unit to report every three years to the legislature on the effectiveness of its data analytic efforts at identifying previously unknown workers' compensation fraud and the magnitude of known or suspected fraud and to revise its data analytics processes if the unit identified improved methods of detecting fraud.

Governor's Veto Message: I am returning Assembly Bill 1697 without my signature. This bill requires the Department of Industrial Relations to establish an anti-fraud unit within the Division of Workers' Compensation and requires the unit to develop data analytic processes to identify sources and the magnitude of fraudulent activity. The work required by this measure is already underway. Additionally, the bill would require the Department to reveal sensitive details about its enforcement practices. This will compromise the state's efforts to combat workers' compensation fraud, a result that nobody wants.

SB 899 (Pan) Workers' compensation.

For purposes of workers' compensation, existing law makes an employer liable only for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. Existing law also requires that apportionment of permanent disability be based on causation and requires the physician to determine the approximate percentage of the permanent disability that was caused by the direct result of the injury arising out of and occurring in the course of employment and the approximate percentage of the permanent disability that was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. SB 899 would have prohibited a physician from using race, gender, or national origin in

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
Legislative Digest 2018

determining the percentage of permanent disability that was caused by other factors before and subsequent to the industrial injury.

Governor's Veto Message: I am returning Senate Bill 899 without my signature. Consistent with current law, this measure seeks to preclude a physician from using race, gender, or national origin as a basis for apportionment. I am vetoing this bill for many of the same reasons that I returned a similar measure in 2011—Assembly Bill 1155. This bill is unnecessary, as it would not change existing law and may disturb settled court decisions, which already provide protection from the inappropriate application of the apportionment statutes. Additionally, the proposed wording of the amended statute may create ambiguities in the law, resulting in increased litigation, costs for employers, and confusion for injured workers and their representatives.