



**JUNE 28, 2022**

For more information,  
contact:

Peter Wozniak  
+1 312 764 6948  
[pwozniak@kslaw.com](mailto:pwozniak@kslaw.com)

Erica Row  
+1 213 218 4008  
[erow@kslaw.com](mailto:erow@kslaw.com)

---

**King & Spalding**

Chicago  
110 N Wacker Drive  
Suite 3800  
Chicago, IL 60606  
Tel: +1 312 995 6333

## California's 2022 Proposed Labor and Employment Laws - Pending Legislation that Employers Should Monitor

---

Series 3, 10 in 10: Issue 2

California employers, both new and old, should take note of pending bills that could further expand companies' legal responsibilities under California's extensive and unique labor and employment laws. Below is a sampling of the Golden State legislation that employers may want to monitor in the coming legislative season.

### **California Senate Bill ("SB") 1044 - Employers: State of Emergency or Emergency Condition: Retaliation.**

California has been in a "state of emergency" since March 4, 2020. SB 1044, referred to by some as a "job killer," creates employment obligations in the event of a "state of emergency" or an "emergency condition."

#### **Prohibits employers from:**

- Taking or threatening adverse action against any employee, including essential workers, for refusing to report to or leaving a workplace within the affected area because the employee "feels unsafe."
- Preventing employees from using their mobile device to seek emergency assistance, assess the safety of the situation or communicate with a person to confirm their safety.

#### **Takeaways:**

- Because violations of this proposed bill will be enforceable under the Private Attorneys General Act (PAGA), employers may be further exposed to civil penalties.



- Whether an employee “feels unsafe” is loosely defined under the bill, so employers will need to tread carefully should an employee make any complaint about workplace safety.

### **AB 257 – Fast Food Accountability and Standards Recovery Act (“FAST Recovery Act”)**

AB 257 would add new onerous requirements for franchisors, including holding fast food franchisors liable for violations by franchisees, and would create the Fast Food Sector Council (FFSC) within the California Department of Industrial Relations (DIR). The FFSC would establish new minimum standards on wages, maximum working hours and working conditions for fast food restaurant workers at restaurants with at least 30 establishments nationwide.

#### **Requires fast food restaurant franchisors to:**

- Ensure its franchisees comply with a variety of new and existing employment, worker and public health and safety laws and orders.
- Be subject to joint and several liability for certain violations by franchisees.

#### **Takeaways:**

- In California, this bill may substantially impact the California fast food and franchise industry.
- The bill could alter the relationship between franchisors and franchisees by creating a private right of action by a franchisee where the franchise agreement’s terms “prevent or create a substantial barrier” to the franchisee’s compliance with the new law.
- Because agreements by a franchisee to indemnify a franchisor for liability will now be deemed contrary to California public policy and thus void and unenforceable, franchisors will need to review their existing franchise agreements.
- Franchisors may also need to examine their policies and practices with regard to ensuring franchisees’ legal compliance, with potential impacts beyond the Golden State for nationwide franchisors.

### **SB 1162 - Employment: Salaries and Wages**

SB 1162 would amend current California pay data reporting laws with respect to private employers with 100 or more employees. It removes the existing provision permitting an employer to submit an EEO-1 in lieu of a pay data report. Moreover, it would authorize the Labor Commissioner to investigate complaints alleging violations and would create a rebuttable presumption in favor of an employee’s claim if an employer fails to properly maintain records. It would also permit courts to impose civil penalties.

#### **Requires covered employers to:**

- Submit a pay data report, distinct from the EEO-1 report, to the Department of Fair Employment and Housing (DFEH). This pay data report is anticipated to include the median and mean hourly rate for each combination of race, ethnicity and sex within each job category.
- Submit separate pay data reports for employees hired through labor contractors.
- Provide, at the request of an employee, the pay scale for the position in which the employee is currently employed.
- Maintain records of a job title and wage rate history for each employee for a specified timeframe. These records will be open to inspection by the Labor Commissioner.



**Takeaways:**

- The bill also requires all employers **with 15 or more employees** to include a position’s pay scale in any job posting.
- The proposed bill dramatically expands pay data reporting obligations. Critically, because the bill will make employer pay data reports publicly available on the DFEH’s website, it could further enable and encourage litigation against employers.

**SB 1454 - California Privacy Rights Act (CPRA) of 2020: Exemptions.**

The CPRA currently exempts certain employee and business-to-business data collection from the requirements of the Act. These exemptions are scheduled to expire on January 1, 2023. SB 1454 would indefinitely extend the exemptions for employee and business-to-business data (covered in our [previous 10 in 10 on CPRA](#)).

**Takeaways:**

- Employers should closely monitor the status of exemptions over the next year.
- If the exemptions expire in 2023, employee data would be subject to the rights and responsibilities under the CPRA.

**Conclusion**

The above legislation is just a sampling of the employment laws making their way through the legislature this session, much of which is likely to be significantly amended along the way. California employers should continue to monitor the changing legal landscape. Based on the most significant bills in play at this time, California employers, particularly those in the fast food industry, may need to prepare for changes related to their leave, wage and hour and pay reporting practices.

---

**ABOUT KING & SPALDING**

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 23 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
ATLANTA	CHICAGO	GENEVA	MIAMI	RIYADH	TOKYO
AUSTIN	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
BRUSSELS	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	