



2022 California Employment Law Update

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California Minimum Wage Increase



- ▶ As of January 1, 2022:
 - ▶ 26+ employees: \$15/hr.
 - ▶ 25 or fewer employees: \$14/hr.
- ▶ Local minimum wage may be higher
 - ▶ E.g., City of San Diego-- \$15/hr. for ALL employees (*regardless of employer size*)

California Minimum Wage Increase

- ▶ Increased salary threshold for “white collar” exemptions
 - ▶ 26+ employees: \$62,400
 - ▶ 25 or fewer employees: \$58,240
 - ▶ Must also meet “duties test”
- ▶ Increased salary threshold for “computer professional” exemption
 - ▶ \$104,149.81 as of 1/1/22
 - ▶ Must also meet “duties test”

California Family Rights Act (CFRA) Expansion

2021 Changes:

- Expanded law's applicability to all CA employers with 5+ employees
- Expanded list of individuals for whom leave can be taken
- Expanded definition of "child"
- Added "qualifying exigency" as covered reason for taking leave
- Eliminated "same employer" and "key employee" exemptions

California Family Rights Act (CFRA) Expansion

2022 Change:

- Parents-in-law added to list of covered family members

Employer best practices:

- Update employee handbook to reflect recent changes
- Train managers and supervisors



Confidentiality and Non-Disparagement Agreements

- Settlement agreement confidentiality provisions cannot prohibit employees from disclosing factual basis for claims arising under Fair Employment and Housing Act (e.g., claims based on sex, race, national origin, religion, disability, etc.)
 - Rule also applies to retaliation claims
- Non-disparagement clauses must expressly inform employees that they are not precluded from reporting unlawful acts in the workplace
 - “Nothing in this agreement restricts you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you believe to be unlawful.”

Confidentiality and Non-Disparagement Agreements

- Disclosure language must also be included in severance agreements
 - However, severance agreements can still include (1) general releases and waivers; and (2) prohibition on the disclosure of trade secrets or other confidential information that does not involve unlawful acts in the workplace
- Severance agreements must also:
 - Notify employees that they may consult with an attorney prior to signing
 - Provide “reasonable period” (not less than 5 business days) for consultation with counsel



Workplace Posters

In any instance in which an employer is required to physically post information in the workplace, the employer may ALSO distribute that information to employees by e-mail

Employer must still comply with existing requirement to physically post notices in the workplace

Fair Employment and Housing Act (FEHA) Record Retention

- Employers must retain employment applications, personnel records, and employment referral records for 4 years
- If employee files DFEH complaint, the employer must preserve records until the later of (1) the expiration of the statute of limitations; or (2) the first date after the complaint has been fully disposed of

CRIMINAL LIABILITY FOR “THEFT OF WAGES”

Penal Code §487m: Intentional theft of wages (including gratuities) in an amount greater than \$950 (individual) or \$2,350 (aggregate) in any consecutive 12-month period may be punished as “grand theft”

“Theft of wages”= Intentional deprivation of wages, benefits, or other compensation, by unlawful means, with knowledge that the wages, benefits, or other compensation are due to the employee

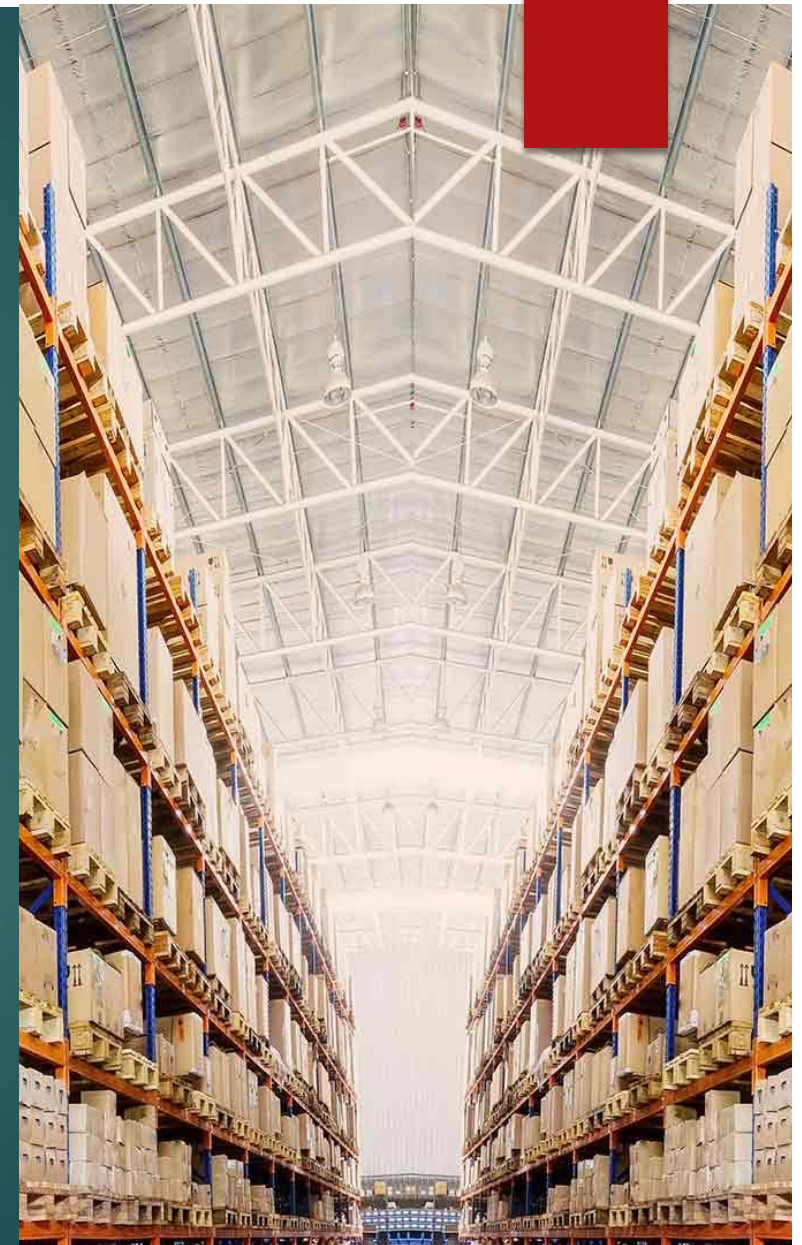


Arbitration Updates

- Arbitrator must provide all parties an invoice for the full amount of arbitration fees owed
- Employer must pay the fees upon receipt of the invoice unless there is an express contractual provision identifying a specific number of days for fee payment
- Best practice tips:
 - Update arbitration agreement to specify deadline for fee payment
 - Update arbitration agreement to clarify that consent to arbitration is voluntary (not mandatory)

Warehouse Quotas

- 100+ employees in single warehouse/1,000+ employees in multiple warehouses
- Non-exempt employees must be provided upon hire written description of each applicable quota
- Notice must identify the number of tasks to be performed or materials to be produced within a specific time period
- Employer cannot maintain quotas that prevent compliance with meal/rest periods, use of bathroom facilities, or occupational health and safety laws



Covid-19 Updates

- ▶ S.B. 93—Mandatory Re-Hire for Certain Industries
 - ▶ Applies to hotels, private clubs, event centers, airport hospitality operations, airport service providers, and businesses that provide building services to office, retail, or other commercial buildings
 - ▶ Applies to “laid off employees”—i.e., an employee who worked for employer 6+ months during 12 months preceding January 1, 2020 and whose recent separation from active service was due to Covid-19 pandemic
 - ▶ If employer establishes a new position, it must first offer the position *in writing* to a previously laid off employee within 5 days of establishing the position
 - ▶ Employee has 5 days to accept/decline the offer
 - ▶ Employer may make simultaneous, conditional offers; re-hire based on length of prior service
 - ▶ If employer declines to recall laid-off employee due to lack of qualifications, employer must provide written notice within 30 days containing specific information
 - ▶ 3 year record retention requirement

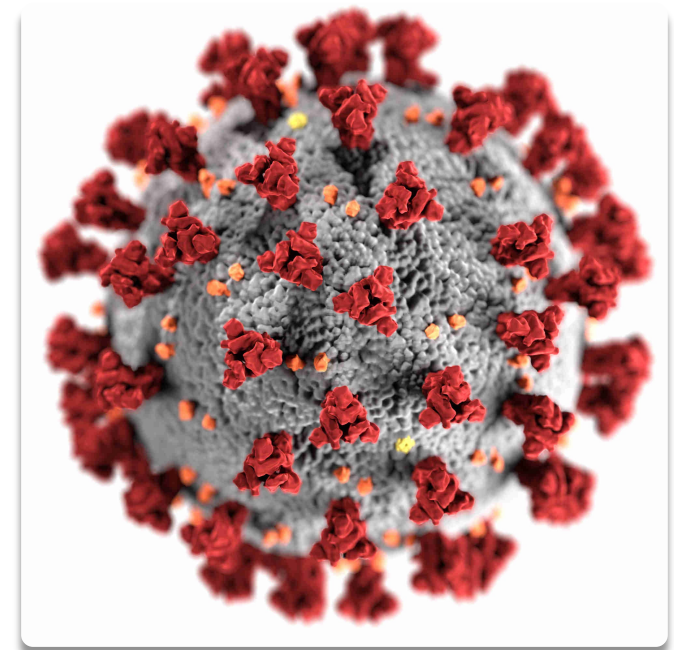
Covid-19 Updates

- ▶ Mask Mandates
 - ▶ California's mandatory indoor mask mandate for all individuals (regardless of vaccination status) extended to (at least) February 15, 2022
 - ▶ Los Angeles County mask mandate: all employers must provide K95 or other surgical grade masks to employees who "work indoors and in close contact with other workers or the public."



Covid-19 Updates

- ▶ **Changes to Isolation and Quarantine Guidelines (CDC, CDPH, Cal-OSHA)**
 - ▶ ***Employee Who Test Positive for Covid-19***
 - ▶ Employee must be excluded from the workplace for at least 5 days
 - ▶ Isolation can end and employee may return to the workplace after day 5 if symptoms are not present or are resolving, **and** a diagnostic specimen collected on day 5 or later tests negative
 - ▶ If an employee is unable or chooses not to test and symptoms are not present or are resolving, isolation can end and the employee may return to the workplace after day 10
 - ▶ If an employee has a fever, isolation must continue and the employee may not return to work until the fever resolves



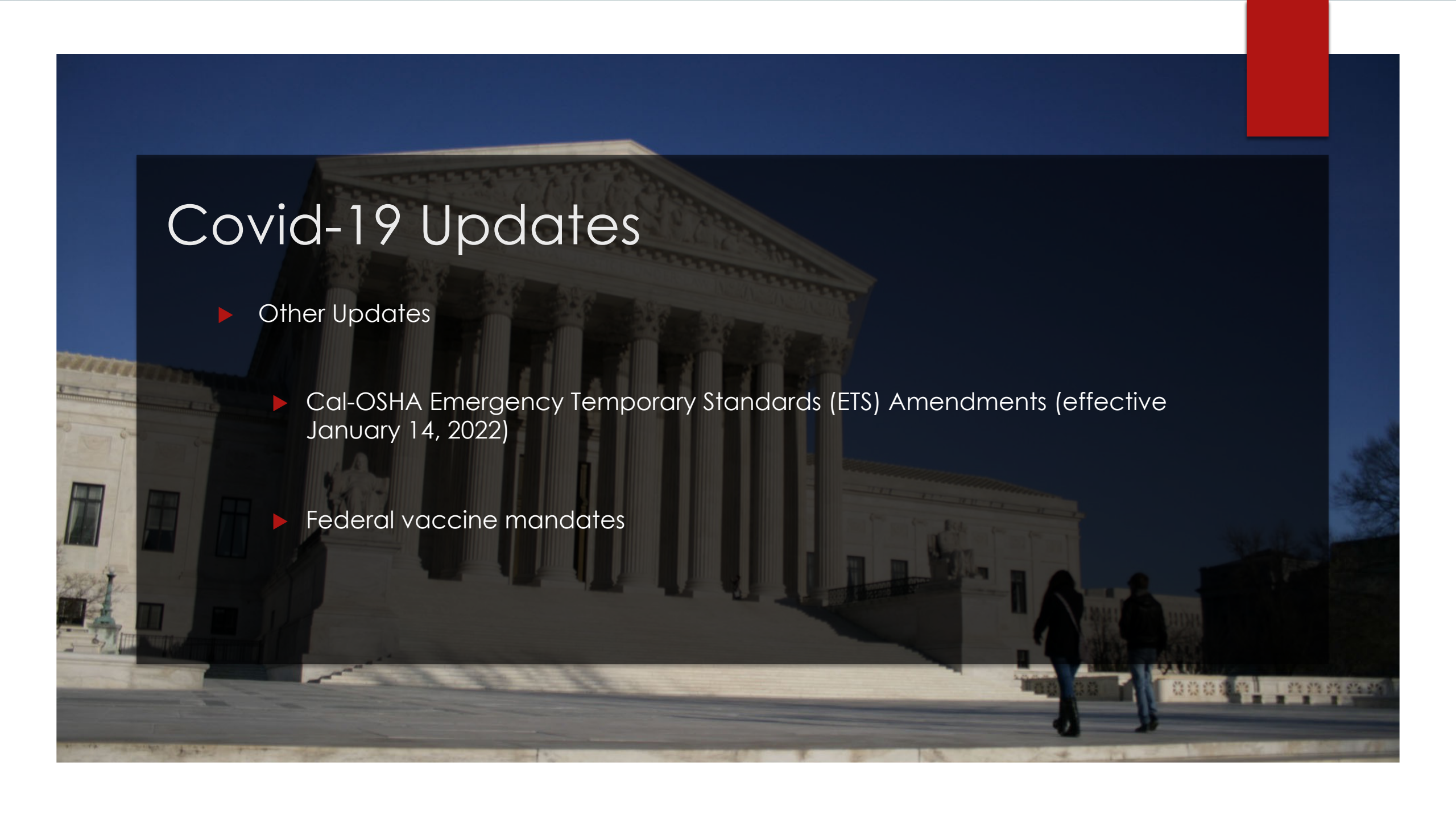
Covid-19 Updates

- ▶ **Changes to Isolation and Quarantine Guidelines (CDC, CDPH, Cal-OSHA)**
 - ▶ ***Employee Who Is Unvaccinated or Booster Eligible and Exposed to Someone with Covid-19***
 - ▶ Employee must be excluded from the workplace for at least 5 days after last close contact with a person who has COVID-19
 - ▶ Exposed employee must test on day 5
 - ▶ Quarantine can end and exposed employee may return to the workplace after day 5 if symptoms are not present **and** a diagnostic specimen collected on day 5 or later tests negative
 - ▶ If an exposed employee tests positive for COVID-19, he/she must follow the isolation requirements
 - ▶ If exposed employee is unable or chooses not to test and does not have symptoms, quarantine can end and the employee may return to the workplace after day 10
 - ▶ Employee must wear face covering around others for a total of 10 days after exposure, especially in indoor settings
 - ▶ If an exposed employee develops symptoms, he/she must be excluded pending the results of a test

Covid-19 Updates

- ▶ **Changes to Isolation and Quarantine Guidelines (CDC, CDPH, Cal-OSHA)**
 - ▶ *Employee Who Is Boosted or Vaccinated and Not Yet Booster Eligible and Exposed to Someone with Covid-19*
 - ▶ Employee does not need to quarantine if he/she:
 - ▶ Tests on day 5 with a negative result; AND
 - ▶ Wears face covering around others for 10 days after exposure, especially in indoor settings
 - ▶ If employee tests positive, he/she must follow isolation guidelines
 - ▶ If employee develops symptoms, he/she must be excluded pending the results of a test
 - ▶ If employee cannot be tested on day 5, he/she must wear a face covering and maintain at least 6 feet of distance from others for 14 days following the close contact.





Covid-19 Updates

- ▶ Other Updates
 - ▶ Cal-OSHA Emergency Temporary Standards (ETS) Amendments (effective January 14, 2022)
 - ▶ Federal vaccine mandates



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