

Sacramento Chapter Webinar Series: Legal Update
October 07, 2020 09:00 AM PST



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CRA – SACRAMENTO CHAPTER LEGAL UPDATE

**Emerging Legal Issues for the New Year
October 7, 2020**

Presented by:

Lukas Clary with Weintraub Tobin

Covid-19 Laws

- Workers' Compensation
 - Gov. Newsom signed E.O. N-62-20 in May 2020
 - Presumption that COVID-19-related illnesses were caused at work
 - Presumption if employee contracts COVID-19 within 14 days of performing work
 - Expired on July 5, 2020, but...
- On September 17, 2020, SB 1159 and AB 685 signed into law

SB 1159: Workers Compensation

- Reinstates workers' compensation presumptions
- Compensation benefits include full hospital, surgical, medical treatment, wage replacement benefits, disability indemnity, and death benefits
- Presumptively compensable after only 30 days rather than standard 90, BUT employees must exhaust paid sick leave first
- Presumption only applies during outbreak (4 or more employees or 4%)
- Effective 7/6/20 – 1/1/23

Workers Compensation Reporting Requirements

- SB 1159: reporting obligation when employer “knows or should know” employee has tested positive
- Report to claims administrator that employee has tested positive, but do not provide any personally identifiable information unless work-related or claim filed
- Date of test
- Address where the employee worked
- Highest number of employees who reported to work there within the last 45 days

AB 685: Employee Notifications

- If employer receives notice of a potential workplace exposure, must within 1 business day:
 - Provide written notice to all employees who were on the premises within the infection period
 - Must be sent in manner usually used to communicate with employees
 - Sent in language understood by the majority of employees
- Provide to representative if the employee has one
- Provide same employees info regarding FFCRA rights, workers' comp benefits, company sick leave, etc.
 - Include company's anti-discrimination and anti-retaliation policies
- Send the company's disinfection and safety plan per CDC guidelines

AB 685: Health Agency Notifications

- If business has an “outbreak,” must report to local health agency within 48 hours
- Outbreak: 3 or more confirmed cases within 2-week period by employees in different households
- Must provide name, occupation, and worksite of the confirmed cases
- Must also provide NAICS code
- Keep health department apprised of additional cases
- Authorizes Cal/OSHA to shut business down if imminent risk, and streamlines “serious violation” citation process
- Effective 1/1/21 to 1/1/23

SB 1383: California Family Rights Act

- CFRA is CA equivalent to federal Family and Medical Leave Act (FMLA)
- Provides sweeping changes to CFRA effective 1/1/21
- Most significantly impacts employers with less than 50 employees, but also impacts larger employers

CFRA cont.

- Current FMLA/CFRA law:
 - Provides for 12 weeks of job-protected unpaid leave during a 12-month period
 - Currently only applies to employers with 50 or more employees within 75-mile radius
 - Eligible employees are those who have worked for at least 12 months of service (can be nonconsecutive) over a 7-year period
 - Worked at least 1,250 hours in the 12-month period preceding the leave

FMLA/CFRA Purpose of Leave

- Baby Bonding – newborn, adopted, foster child;
- Family Care – child, spouse, parent, registered domestic partner (CFRA), child of a registered domestic partner (CFRA) with “serious health condition” (SHC);
- Medical Leave – employee’s own “serious health condition;”
- Servicemember Family Care (FMLA);
- Qualifying Exigency (FMLA).

New CFRA

- Effective January 1, 2021
- Eliminates 50-employee threshold and replaces it with 5-employee threshold
- Expanded definition of “family member”
 - Currently only includes minor child, spouse, and parent
 - New definition adds siblings, grandparents, grandchildren, and domestic partner
 - “Child” will now include adult children and children of domestic partners

Additional CFRA Changes

- Eliminates provision that had allowed employers to refuse to provide full 12 weeks of parental leave associated with birth, adoption, or foster care placement, when both parents worked for the same employer
- Adds requirement to provide leave due to qualified exigency when spouse, domestic partner, child, or parent is called to active duty
- Removes “key employee” exception for highest 10% of workforce
- Repeals New Parent Leave Act

Status of Challenges to App-Based Driver Laws

- Changes to laws in 2018 (*Dynamex*) and 2020 (AB 5) rendered virtually all app-based drivers as employees rather than independent contractors
- Why it matters to restaurants:
 - Will impact pricing of app-based delivery services
 - Will impact availability of app-based delivery services
 - Small risk of joint employer determinations
- Uber/Lyft/Doordash have fought back through courts and ballot initiatives
- CA Attorney General sued Uber and Lyft for noncompliance
- SF DA sued Doordash under same theory

Status of Challenges to App-Based Driver Laws (cont.)

- Court of Appeal to hear arguments on October 13
 - Ruling expected no later than mid-January
- Proposition 22 on November ballot would create exemption for app-based drivers

Any Questions?
Anyone?? Anyone???



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Contact Information + COVID19 Resources

California Restaurant Association. Membership matters.

There are many reasons why to become a CRA member, such as Advocacy, Resources, Support, Community, Foundation and Savings. Learn more about member benefits below and tell us what's your why! [Restaurant Member](#) | [Allied Member](#)

Reopening + COVID19 Resources

CRA: <https://www.calrest.org/coronavirus-resources>

Weintraub Tobin: <https://www.weintraub.com/covid-19-resources>

CRA Helpline: 800.765.4842 ext. 2743 helpline@calrest.org

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