

Is Your Charter School in Compliance with The Top Six New 2022 Employment Laws?

January 28, 2022

It's that time of year again as the Golden State begins implementing the spate of new rules and procedures signed into law by Governor Newsom for 2022. This year, the following new laws stand out among the rest as particularly impactful for charter schools.

How prepared are you for the upcoming changes?

1 California Increases the State Minimum Wage & Minimum Exempt Employee Salary Requirements Effective January 1, 2022

Effective January 1, 2022, the State's minimum wage increases to \$15/hour for employers with 26 or more employees and \$14/hour for employers with 25 or fewer employees. In addition to impacting hourly employees who receive the minimum wage, these increases also raise the mandatory minimum exempt salary that must be paid to exempt employees in California. Keep in mind that the minimum wage may be higher in a charter school's local area as at least 26 cities in California have adopted their own minimum wage increases, effective January 1, 2022.

2022 represents the second-to-last year of California's ongoing annual minimum wage increase adopted by the Legislature in 2017. Once the State's minimum wages reaches \$15/hour for all employers on January 1, 2023, future increases will be based on inflation under the current law.

➔ **Homework Assignment:** Employers should review all employee compensation and make any necessary changes to be in compliance effective January 1, 2022.

2 California Increases Criminal Penalties for the Non-Payment of Compensation Owed to Employees & Independent Contractors, Making Any "Intentional" Non-Payment Punishable as a Felony or Misdemeanor

Assembly Bill 1003 makes an employer's intentional non-payment of wages or benefits owed to an employee punishable as grand theft and chargeable as a misdemeanor or felony crime. The law broadly applies to all workers, including employees, independent contractors, and especially

misclassified independent contractors. Under the new statute, employers and hiring entities may be charged with criminal action, which may mean personal liability for administrative and managerial staff with decision-making authority.

Due to the complicated criteria for designating an independent contractor in California, misclassified independent contractors are likely the number one risk of violation under the new law.

➔ **Homework Assignment:** Employers should review their independent contractor and vendor agreements with legal counsel to avoid liability.

3 The California Family Rights Act Expands the Definition of Qualifying Family Members to Include Parent-In-Laws

Assembly Bill 1033 confirms that qualifying employees may take leave under the California Family Rights Act (“CFRA”) for a parent-in-law after recent legislation to expand the law inadvertently omitted the familial relationship. Effective January 1, 2022, CFRA provides time off for the care of a parent-in-law, which is defined as the parent of a spouse or domestic partner. As CFRA continues to deviate from its federal counterpart, the Family and Medical Leave Act (“FMLA”), employers must be particularly mindful of how these leaves interact to remain legally compliant.

➔ **Homework Assignment:** Employers should ensure Employee Handbooks and policies are updated to reflect the revision and begin immediately providing leave for this purpose.

4 Cal/OSHA Gains Greater Enforcement Authority Over Employers & Revamps its COVID-19 Emergency Temporary Standards

Senate Bill 606 grants greater enforcement authority to Cal/OSHA. Effective January 1, 2022, non-compliant Injury & Illness Prevention Plans (“IIPP”), COVID-19 Prevention Programs, and other safety regulations will create a rebuttable presumption of a company-wide Cal/OSHA violation for multi-site employers. Cal/OSHA will have the power to issue company-wide citations and abatement orders, and penalize first offenses by multi-site employers under the harsher repeat offender formula, where fines may be hundreds of thousands of dollars.

Further, effective January 14, 2022, Cal/OSHA renewed its Emergency Temporary Standards (“ETS”) on COVID-19 prevention, which include new requirements related to COVID-19 quarantine and employee pay during quarantine. Governor Newsom further reinforced the ETS by issuing an Executive Order that removed limitations on readopting the ETS from January 14, 2022, through April 14, 2022, with an open door for a further extension.

➔ **Homework Assignment:** Employers should prepare to update their IIPPs and COVID-19 Prevention Programs and revamp employee training programs on the measures to avoid penalties, fines, and other Cal/OSHA enforcement action.

5 Employers Offering Settlement Agreements & Severance Packages With Confidentiality Provisions Face New Hurdles & a New 5-Day Waiting Period

Emerging out of the #MeToo movement, Senate Bill 331 creates new restrictions on employers offering severance packages and settlement agreements to separating employees. Under the revised law, certain agreements containing non-disclosure and confidentiality provisions must have an express carve-out protecting the employee's ability to discuss "unlawful acts in the workplace." Employees must also be provided a 5-day window in which to consider the agreement and seek the assistance of legal counsel before accepting any non-disclosure terms from the employer.

➔ **Homework Assignment:** Employers should confer with legal counsel before offering settlement agreements and severance packages to prevent violations of these new and special rules.

6 Employees Must Exhaust New Department of Fair Employment and Housing Requirements Before Bringing Certain Leave Related Lawsuits

Assembly Bill 1033 modifies the Department of Fair Employment and Housing's ("DFEH") family leave mediation pilot program, which allows for the mediation of certain leave-related disputes between employees and employers with 5-19 employees. Under the revised law, employees are prohibited from bringing a lawsuit against a small employer related to their leave until mediation is finished if either party has requested mediation. This new requirement imposes an additional hurdle before employees of small employers can bring a lawsuit related to CFRA leave rights.

➔ **Homework Assignment:** Be mindful of mediation options in case of a DFEH complaint.

7 Executive Order Granting Hiring Flexibility for Substitute Teachers and Retirees

Governor Newsom signed an Executive Order on January 11, 2022, expanding hiring flexibility for schools in light of recent staffing shortages. For example, substitutes for whom schools apply for Temporary County Certificates ("TCC") do not have to submit an underlying credential application to the CTC or complete an oath indicating the same while the temporary order is in effect. In addition, the Executive Order extends the length of time in which an emergency permit holder may serve in the same general education assignment to 120 days until March 31, 2022. Moreover, the postretirement earnings limitation and 180-day separation from service requirement, both of

which apply to retired members of STRS, are suspended until March 31, 2022, making it easier to hire retirees. Employers should note that other restrictions or steps may still apply.

➔ **Homework Assignment:** Employers should contact legal counsel for assistance in drafting these findings.

8 COMING SOON: Additional COVID-19 Sick Leave?

Governor Newsom recently announced a deal with legislative leaders in California to provide up to 2 weeks of COVID-19 paid sick leave for employees of organizations with 26 or more employees. The new grant of leave is expected to be offered as an early budget action and be made available to employees retroactive to January 1, 2022. Qualifying employers are expected to be provided tax credits to offset the added cost of new leave. However, until the new grant of leave is signed into law, employers may proceed according to state and local paid sick leave requirements.

➔ **Homework Assignment:** Employers should closely monitor action by the Legislature and Governor Newsom and be prepared to implement a new leave program on short notice. Check your inbox for further COVID-19 paid sick leave updates from YMC.

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