Glendale City Employees Association November 2023 News

Governor Newsom Signs Important New Legislation into Law

Last month was the deadline for Governor Newsom to sign a wave of new state legislation into law. Here are some of the key ones protecting employees.

Temporary Public Employees (AB 1484): Amends the Meyers-Milias-Brown Act, Gov't Code Section 3500 *et seq*., to require public agencies who hire temporary employees to perform the same or similar type of work that is performed by permanent employees represented by a recognized employee organization to:

- At the request of the recognized employee organization, automatically include temporary employees in the same bargaining unit as the permanent employees, if the temporary employees are not already in the bargaining unit.
- At the request of the recognized employee organization, promptly engage in collective bargaining to establish wages, hours and terms and conditions of employment for the newly added temporary employees, if the parties' current MOU does not address them.
- Upon hire, provide each temporary employee with their job description, wage rates, and eligibility for benefits, anticipated length of employment, and procedures for open, permanent positions.
- Provide the same information to the recognized employee organization within five business days of hiring the temporary employee.

- Provide the recognized employee organization with the anticipated end date of employment for each temporary employee or the actual end date if the temporary employee has been released from service since the last list was provided.
- Bargain with the recognized employee organization that represents the permanent employees as to whether a temporary employee who subsequently obtains permanent employment receives seniority or other credit or benefit for their time spent in temporary employment.
- Bargain with the recognized employee organization that represents the permanent employees as to whether a temporary employee receives a hiring preference over external candidates for permanent positions.

Violations are enforceable as unfair practice charges with the Public Employment Relations Board (PERB) pursuant to Gov't Code Section 3509. This law significantly strengthens the rights of temporary employees and public employee organizations that represent permanent employees who do the same work. The law makes it far less likely that public agencies will use temporary employees to perform bargaining unit work.

Leave for Reproductive Loss (SB 848): Last year, Governor Newsom signed AB 1949, which amended the California Fair Employment and Housing Act ("FEHA") to require employers to provide for up to five days of bereavement leave per occurrence upon the death of a family member. This bill fills a gap left from last year's law. It requires employers to provide up to five days of reproductive loss leave following a reproductive loss event, which is defined as the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction. Failed adoption, failed surrogacy, miscarriage, stillbirth, and unsuccessful assisted reproduction are specifically defined in the law. It includes intrauterine insemination (IUI) and other assisted reproductive technology (ART), like in vitro fertilization (IVF). The law applies to a person who would have been a parent of a child but for the reproductive loss event. The five days do not have to be taken consecutively.

The law makes it an unlawful employment practice for an employer to fail to provide or refuse to grant a request by an eligible employee to take up to five days of reproductive loss leave following a reproductive loss event. As with AB 1949, the law only covers employees who have worked for their employer for at least thirty days, and the leave must be taken within three months of the event. But, unlike AB 1949, which provides for five days of bereavement leave per occurrence with no cap on the number of occurrences per year, this law says that if an employee experiences more than one reproductive loss

event within twelve months, the employer is not obligated to grant a total amount of reproductive loss leave time of over twenty days within a twelve-month period.

As with AB 1949, the leave is unpaid. However, employees may use certain other leave balances otherwise available to the employee, including accrued and available paid sick leave. The law makes leave under these provisions a separate and distinct right from any right under the FEHA. It makes it unlawful for an employer to retaliate against an individual because of the individual's exercise of the right to reproductive loss leave or the individual's giving of information or testimony as to reproductive loss leave, as described. The law does not specifically authorize employers to require medical documentation as a condition for granting leave, but it does require employers to maintain employee confidentiality relating to reproductive loss leave, as specified.

Paid Sick Days (SB 616): This is the first significant expansion of the Healthy Workplaces, Healthy Families Act of 2014, which was a landmark law that required California employers to provide paid sick leave to employees. This bill provides the following:

- Extends paid sick days in California from three days to five days.
- Requires an accrual rate that is not less than one hour per thirty hours worked.
- Extends the amount of sick leave that can be carried over to the following year of employment from three days (or twenty-four hours) to five days (or forty hours).
- Says employees must be eligible to earn at least five days or forty hours of sick leave or paid time off within six months of employment.
- Raises the minimum cap from forty-eight hours (six days) to eighty hours (ten days).

The law excludes specified employees from its provisions, including employees covered by a valid collective bargaining agreement (described as CBA employees). Many full time permanent public employees are currently covered by MOUs or sick leave policies that provide for more than what is required under the Healthy Workplaces, Healthy Families Act of 2014, and these MOUs or policies may currently provide even more than what is required under SB 616. However, public sector agencies will likely revise their sick leave policies in the months ahead to ensure compliance with this latest expansion.

Employers may allow employees to use paid sick days from their future leave accruals. Employers shall provide employees with the amount of sick leave available on their

itemized wage statement. Employees may determine how much paid sick leave they anticipate using. However, employers can set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave. If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notice. If the need is not foreseeable, the employee shall provide notice of the need as soon as practicable.

Other Important Legislation: Governor Newsom signed many other bills that strengthen general workplace protections. Those include:

- **AB 1** – Enacts the Legislature Employer-Employee Relations Act to provide employees of the State Legislature, except certain specified categories of excluded employees, the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. The Act will parallel those of the Ralph C. Dills Act, which applies to state employees. The Act also vests PERB with jurisdiction over enforcement.
- **AB 96** – The law places two important requirements on public transit employers. First, the employer must provide written notice to the exclusive employee representative of the workforce affected by autonomous transit vehicle technology of its determination to begin a procurement process. The notice must be at least ten months before beginning the procurement process. This requirement applies when a public transit employer seeks to acquire or deploy any autonomous transit vehicle technology for public transit services that would eliminate job functions or jobs of a workforce. Second, the law requires an employer, upon written request from an exclusive employee representative, to commence collective bargaining within a specified time on certain subjects, including creating plans to train and prepare the affected workforce to fill new positions created by autonomous transit vehicle technology. The law vests PERB with jurisdiction over enforcement, but only as to public transit district employers where PERB currently has jurisdiction to process unfair practice charges.
- **AB 520** – Provides that any public entity, defined as a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state, is jointly and severally liable for any unpaid wages for employees of any individual or business entity that contracts for services in the property services or long-term care industries.

- **AB 933** – Protects survivors of sexual assault, harassment, and discrimination from meritless defamation lawsuits by (1) clarifying that statements made in good faith about their experience are a form of protected speech, and (2) permitting survivors to obtain reasonable attorneys' fees and damages for successfully defending against meritless defamation lawsuits.
- **AB 1228** – Requires the hourly minimum wage for fast food restaurant employees to be $20 per hour effective April 1, 2024. The law then authorizes the Fast-Food Council to establish minimum wages for fast food restaurant employees annually.
- **SB 365** – Protects workers and consumers from delay tactics employers and businesses use when a trial court rules that a forced arbitration agreement is invalid. The current law had allowed corporate defendants to effectively pause a worker or consumer's case, sometimes for years at a time, by simply filing an appeal. This bill allows a worker or consumer's case to move forward even if an appeal is filed, instead of putting the case on hold.
- **SB 461** – Authorizes state employees to elect to receive eight hours of holiday credit for observance of a holiday or ceremony of the state employee's religion, culture, or heritage in lieu of receiving eight hours of personal holiday credit.
- **SB 497** – Establishes a ninety-day rebuttable presumption for retaliation claims brought under Labor Code Section 98.6 (retaliation claims filed with the Labor Commissioner) and Labor Code Section 1197.5 (the Equal Pay Act). This means an employer is presumed to have acted with retaliatory intent if it takes a personnel action against a worker who made a claim or complaint within the last ninety days.
- **SB 525** – Enacts a phased in multi-tiered state minimum wage of $25 per hour (starting June 1, 2026) for health care workers employed by covered facilities.
- **SB 553** – Requires employers to implement an effective workplace violence prevention plan, including training employees, an incident log, other recordkeeping responsibilities, and to include the plan as part of its injury prevention program. Allows the collective bargaining representative to seek a temporary restraining order on behalf of affected employees at a workplace.
- **SB 699** – Any contract that is void under California's restraint of trade law is unenforceable regardless of where and when it was signed. Allows an employee, former employee, or prospective employee to sue to enforce these provisions. Prohibits an employer from entering into a contract with an employee or prospective employee that includes a provision that is void as described therein.
- **SB 700** – Makes it unlawful, on or after January 1, 2024, for an employer to request information from an applicant for employment relating to the applicant's prior use

of cannabis, as specified. Under the bill, information about a person's prior cannabis use obtained from the person's criminal history would be exempt from the above-described existing law and bill provisions relating to prior cannabis use if the employer is permitted to consider or inquire about that information under a specified provision of the California FEHA or other state or federal law. A bill signed last year (AB 2188) made it unlawful for an employer, on or after January 1, 2024, to discriminate against a person based on the person's use of cannabis off-the-job and away from the workplace or upon an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in the hair, blood, urine, or other bodily fluids. AB 2188 did not invalidate pre-employment drug screening and it exempted employees in the building and construction trades and applicants and employees in positions requiring a federal background investigation or clearance. AB 2188 also did not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or licensing-related benefits, or entering into a federal contract.

- **SB 885** – Makes various changes to public employees' retirement law, including changing the age for required distributions from a defined contribution plan from age 72 to the age specified by federal law. Beginning in 2023, the SECURE 2.0 Act, a federal law, raised the age that an individual must begin taking required minimum distributions (RMDs) from age 72 to age 73.

Legislation Governor Newsom Vetoed: This year, some of the biggest headlines were bills that Governor Newsom vetoed, including:

- **AB 524** – The purpose was to prohibit discrimination against family caregivers and add "family caregiver status" to the list of protected categories under the Fair Employment and Housing Act (FEHA). It defined family caregiver as a person who is a contributor to the care of one or more family members.
- **AB 1356** – Was proposed to strengthen California's Worker Adjustment and Retraining Notification Act by expanding protections for workers impacted by mass layoffs and require employers to give ninety days' notice prior to a mass layoff, guarantee that workers do not have to waive their legal rights to be protected, and extend mass layoff protections to contract workers.
- **SB 403** – Would have defined "ancestry" for purposes of the Fair Employment and Housing Act (FEHA) to include "caste," as defined.

- **SB 686** – Would have established health and safety protections for domestic workers under California's Occupational Safety and Health Act (Cal/OSHA), including a financial and technical assistance program for domestic service employers and provide for health and safety outreach and education for domestic service workers and employers.
- **SB 731:** Would have made it an unlawful employment practice for an employer to fail to provide to an employee who is working from home at least thirty calendar days' advance notice before requiring the employee to return to work in person.
- **SB 799** – Would grant striking workers in an authorized trade dispute to collect unemployment (UI) benefits after a two-week wait period while they are on strike.

News Release - CPI Data!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

3.7% - CPI for All Urban Consumers (CPI-U) Nationally

3.9% - CPI-U for the West Region

3.2% - CPI-U for the Los Angeles Area

3.4% - CPI-U for San Francisco Bay Area (from August)

4.9% - CPI-U for the Riverside Area

4.7% - CPI-U for San Diego Area

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: I work as a Parks Facilities Maintenance Worker II. For the longest time, my job description and the job descriptions of many other employees here has included this wording: "Standby assignment is at the discretion of the Division Head." I have been required to be on call while other employees have not. I have had to answer calls during non-working hours to react to issues that do not pertain to my regular duties during normal

working hours. For example, irrigation issues (I'm not an Irrigation Maintenance Worker), ballfield issues (I'm not a Groundskeeper), and reservation lighting issues (I'm not involved in setting those up). I know one person is not required to be on call since he had a second job during non-working hours. Our previous irrigation worker was excused because he did not want to be on-call. When HR uses language like that in the job description, how legal is it? And with the examples I've listed, is the Parks Department management practicing favoritism?

Answer: Many organizations have standby and callback assignment policies to address emergency situations and work that cannot wait until an employee's next scheduled shift to be performed. If your job description states your position may be required to be on standby, then your employer is allowed to assign it. If you are being asked to do work without proper training, or you do not possess the required certificates or licenses to perform those tasks, contact your supervisor. They should be able to find another person to perform the work. You can ask your supervisor to arrange for any training you need to perform the job in the future. Keep track of the type of jobs you are called out for, and if they are frequently outside of your skill set or qualifications, speak with your employee organization representative. It may be necessary to revisit the standby policy to add personnel based on expertise.

There may be legitimate reasons why some people in your department do not work standby. People may have obligations that conflict with their ability to work standby, including being a caregiver, having disabilities, living too far away, or having a second job. Supervision or HR may have excused them from standby because of these reasons. Check your MOU and the organization's policy regarding standby or on-call assignments. There may be a process for making standby assignments, such as through volunteers, a set rotation, or inverse seniority. There may also be a limit on how often an employee can work standby, which helps reduce fatigue and burnout. If you are working too often, you may have an increased risk of making a mistake or getting hurt. If you find that the policy is not being followed, or that you need help with the standby workload, talk to your supervisor and let your employee organization know.

Question: I'm looking to retire and want to know when is best. If I retire by the

end of the calendar year, I believe I'll be eligible for a COLA on my CalPERS sooner than if I retire next year. However, I have a lot of leave accruals that will be cashed-out, and if I retire in December after a full year of earnings, I'll be taxed on the cash-outs at a much higher rate. Can I wait until January 1 and still be eligible for the CalPERS COLA? How do other people who are looking to retire handle this?

Answer: Planning for retirement is one of the most important things you can do. Sometime before retirement, the earlier the better, a great first step is to speak with a financial planner to set financial goals and estimate what you will need to save along the way. When you get closer to retirement, consider setting up a meeting with CalPERS to calculate your expected retirement income.

A member who retires on December 31 may receive their cost-of-living adjustment (COLA) one year earlier than someone who retires on January 1 of the following year. For example, a member who is retiring on December 31, 2023, is eligible for a COLA in May of 2025 (about 16 months after retirement), whereas a retirement date of January 1, 2024, makes them eligible for a COLA in May of 2026 (about 28 months after retirement). A member's earliest retirement date must be the day after their last day worked or compensated by their employer. For example, if a member's last day worked is December 31, then the earliest retirement date is January 1. Talk to a CalPERS representative to figure out which retirement date would be best for you.

When leave accruals are cashed out, they are taxed like supplemental income. Before you cash out, you should speak with a tax professional on how best to minimize the leave cash-out tax liability. One method could be to roll the leave accrual cash-out into your deferred compensation account or other retirement account. Depending on your age and previous years' contributions, you may be eligible for the catch-up provision that allows you to contribute more than the current 2023 annual limit of $22,500 for deferred compensation accounts. Speak with HR about the timing of the cash out (*e.g.,* whether the cash out is paid in December or January) and when and how to change your deferred compensation election.

Question: If you approach a supervisor or manager with concerns, and they proceed to talk about it with a colleague or engage in discussions with other

coworkers that can be considered gossip, is there a neutral individual who you can confide in? Is there a way to address this situation to prevent its recurrence? Do we have a designated safe and confidential space for this?

Answer: Supervisors and managers are often entrusted with information about staff or the organization that should only be revealed to parties with a need to know and a specific business purpose. No one wants their private personal information shared with others needlessly. You should review your organization's policies regarding confidentiality and proper reporting procedures. It is possible that your supervisor has not received adequate training on proper procedures or confidentiality. It may be useful to show your supervisor copies of relevant policies. Express your interest in keeping any communication confidential and confirm that he or she will adhere to the policies of confidentiality you outlined.

If the supervisor or manager continues to share private information with others who do not have a need to know or valid business reason, document the incidents and speak directly to HR. Even if you request that information be kept confidential, sometimes a supervisor or manager will have an obligation to report and share the information with a director or HR. This can happen, for example, if you tell a superior something involving alleged discrimination or harassment.

Question: I recently took a significant pay cut from my part-time job here at the City to become a full-time employee. I thought if a full-time employee changes position, the City would bring them in at the closest step to their current pay or a 5% higher step. The promotion increase language says, "Any employee receiving a promotion shall receive a salary increase equivalent to one pay step (5%) or shall be placed on the first step of the salary schedule for the class to which he/she is promoted, whichever is greater." I requested to start at a higher step and was denied. Is there anything I can do?

Answer: It depends. Different rules may apply to an employee depending on their part-time or full-time status. First check your MOU to determine if you were covered by it when you were a part-time employee, as some will only apply to regular full-time employees. If you were covered by the MOU, and it includes the promotion language, you should speak with HR about getting your pay rate corrected. If HR refuses, contact your

employee organization. You may have grounds for a grievance.

If you were not covered by the MOU when you were a part-time employee, other City policies or personnel rules may be in effect that would apply to your situation. If there is language that states that when a part-time employee is promoted, they shall receive a step increase or raise, then you should talk to HR about getting your pay rate corrected.

Some agencies will allow employees to request a higher pay rate when they hire in or promote. When making the determination, the City may look to criteria including the employee's experience, education, or skills. It is important to negotiate the pay rate before accepting the position because otherwise you may be left without recourse. Some employees may be open to accepting a lower hourly rate in exchange for a better benefits package (medical insurance, retirement plan, leave accruals). Ultimately, you will have to decide which option is best for you.

Question: I am resigning and retiring. I wasn't planning on providing a two-week notice. I spoke with HR, and they told me that because I am choosing not to provide a two-week notice, my release records will say "not rehirable." Can they do this? I haven't had a performance review in the last 3+ years and I am resigning from employment with 17 years with the employer.

Answer: If an employer has a legitimate non-discriminatory or non-retaliatory reason for refusing to rehire, the employer can do so. However, because of AB 749, which was enacted in 2019, no-rehire provisions are generally void in settlement agreements entered on or after January 1, 2020. This is now codified as Code of Civil Procedure Section 1002.5. Although the law does not prohibit use of the no-hire designation outside of the settlement agreement context, many employers have since moved away from using this terminology internally, particularly with respect to job reference checks.

Your MOU or organization's personnel rules may have a provision regarding resignation, which states that, to maintain eligibility for rehire, an employee is required to give two weeks' notice. Since you are retiring, getting rehired at the organization is not an issue. An organization uses the not eligible for rehire designation internally when reviewing job candidates. To avoid the designation, some people may

provide two weeks' notice and use paid time off for that period.

If you are applying for another job, a potential employer may ask your current or most recent employer questions to verify your position, salary, and dates of employment, which the current or most recent employer can provide. If the potential employer asks if your current or most recent employer would re-hire you, they will probably refrain from answering. Employers tend to have policies in place that limit what is disclosed about both current and former employees. This helps reduce the possibility of saying something defamatory and getting sued. If you are asked by a potential employer on an application or during an interview if you are eligible for rehire, you should answer honestly and provide an explanation regarding your retirement, if asked.