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PRACTICE BRIEF · EMPLOYMENT LAW

Recent Developments in California Employment Law: 2023-2024

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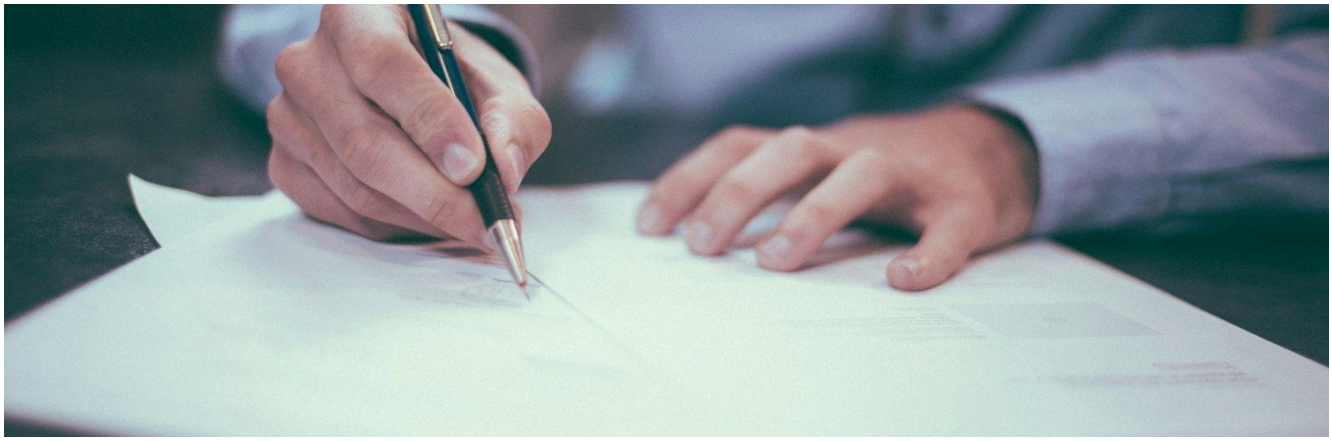

The 2023-2024 period marked one of the most active legislative and enforcement cycles in California employment law history. From new transparency mandates to the unwinding of pandemic-era protections and the crescendo of Private Attorneys General Act litigation, California employers and workers navigated a rapidly evolving legal landscape. This review examines five developments that reshaped workplace rights and obligations across the state.

I. CROWN Act Enforcement Expansion

California's **CROWN Act** (SB 188, effective January 1, 2020) amended the Fair Employment and Housing Act (Government Code section 12926) to define "race" as inclusive of traits historically associated with race, including hair texture and protective hairstyles such as braids, locs, twists, and knots. While California was the first state to enact such protections, the 2023-2024 period saw a significant escalation in enforcement activity by the Civil Rights Department (CRD, formerly the Department of Fair Employment and Housing).

CRD complaint data from 2023 showed a marked increase in hair discrimination filings under FEHA, particularly in the hospitality, retail, and healthcare sectors where grooming policies historically imposed Eurocentric standards. The CRD issued updated guidance clarifying that facially neutral grooming policies requiring "neat and professional" hair can constitute unlawful race discrimination under Government Code section 12940(a) if they disproportionately burden

employees with natural Black hairstyles. Several employers in Southern California entered into conciliation agreements requiring rescission of dress code provisions that prohibited locs and twists, with monetary settlements and mandatory supervisor training.

The enforcement expansion also reflected a broader trend. AB 1815, signed in 2024, further amended the CROWN Act's language in Government Code section 12926(w) to remove the word "loosely" from the definition of protective hairstyles, eliminating a textual ambiguity that some employers had attempted to exploit by distinguishing between "tightly" and "loosely" defined styles. This legislative refinement signaled the Legislature's intent to foreclose narrow readings of the statute and confirmed that the CROWN Act's protections extend to all hairstyles commonly associated with race, without qualification.

II. Pay Transparency Under SB 1162: The First Year

SB 1162, effective January 1, 2023, imposed two distinct obligations on California employers. First, it amended Labor Code section 432.3 to require employers with 15 or more employees to include pay scale information in all job postings, including those posted by third-party recruiters. Second, it required employers with 100 or more employees to file annual pay data reports with the CRD, broken down by job category, race, ethnicity, and sex, including median and mean hourly rates for each category.

The first year of SB 1162 enforcement revealed significant compliance gaps. A CRD review of job postings in major California markets during 2023 found that a substantial percentage of covered employers either omitted pay ranges entirely or posted ranges so broad as to be functionally meaningless, such as "$50,000 to $250,000." The CRD took the position that excessively broad ranges may violate the statute's purpose of providing "meaningful" pay scale information, though no formal enforcement action on that theory was publicly reported during the initial compliance period. Employers also struggled with the pay data reporting requirements, particularly the disaggregation of compensation data by establishment and job category under the new reporting format.

SB 1162 also carried significant litigation implications beyond direct enforcement. Plaintiffs' attorneys began using publicly posted pay ranges as evidence in Equal Pay Act claims under Labor Code section 1197.5, arguing that posted ranges constituted employer admissions about the expected pay for a given role. Where an employee's actual compensation fell below the posted minimum, plaintiffs argued this created a presumption of pay discrimination requiring rebuttal. The intersection of pay transparency mandates and pay equity litigation is expected to generate substantial case law as courts address what evidentiary weight, if any, posted pay ranges carry in discrimination proceedings.

III. COVID Supplemental Paid Sick Leave Sunset

California's **COVID-19 Supplemental Paid Sick Leave** (SPSL), last extended by AB 152, expired on December 31, 2022. The sunset of SPSL removed the requirement that employers with 26 or more employees provide up to 80 hours of dedicated COVID-related paid leave. However,

the transition was not as clean as employers anticipated. Employees who began a leave period before the expiration date retained the right to complete that leave, and several employers faced claims from workers who were denied leave continuity in early January 2023.

The SPSL sunset did not eliminate all COVID-related workplace obligations. Cal/OSHA's COVID-19 Prevention Non-Emergency Regulations, codified in Title 8, California Code of Regulations, section 3205, remained in effect through February 3, 2023, requiring employers to maintain written COVID prevention programs, provide testing after outbreaks, and exclude COVID-positive employees from the workplace. Critically, exclusion pay requirements under section 3205(c)(10) obligated employers to continue paying excluded employees their regular wages during the exclusion period, even after SPSL itself expired. The gap between the SPSL sunset and the Cal/OSHA regulation expiration created a brief but confusion-prone window in which employers' leave obligations depended on the specific regulatory basis for the absence rather than a single statutory mandate.

After the full expiration of COVID-specific protections, employees retained access to standard paid sick leave under the Healthy Workplaces, Healthy Families Act (Labor Code sections 245-249), which AB 1522 had originally set at three days and which SB 616, effective January 1, 2024, expanded to five days or 40 hours. Employees with COVID could also invoke protections under FEHA's disability accommodation framework if their condition qualified as a physical disability under Government Code section 12926(m), or use CFRA leave under Government Code section 12945.2 for serious health conditions. The practical effect was a shift from a single, easily administered COVID leave entitlement to a patchwork of general-purpose protections that required more sophisticated case-by-case analysis.

IV. PAGA Claims Surge Pre-Reform

The **Private Attorneys General Act** (Labor Code sections 2698-2699.8) experienced an unprecedented surge in claim filings during 2023 and the first half of 2024, as plaintiffs' attorneys accelerated filings in anticipation of reform legislation. PAGA, which permits an "aggrieved employee" to bring a civil action on behalf of the state for Labor Code violations, had been the subject of escalating criticism from the business community over its volume, cost, and the perceived disconnect between penalties recovered and actual harm to workers.

The pre-reform period exposed several structural issues in PAGA litigation. Courts grappled with manageability problems in PAGA trials involving thousands of aggrieved employees and dozens of alleged violations, particularly after the California Supreme Court's decision in *Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022), and the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), which held that the Federal Arbitration Act preempted California's rule prohibiting division of PAGA claims into individual and non-individual components. The resulting confusion over standing -- whether a plaintiff whose individual claims were compelled to arbitration retained standing to pursue representative

PAGA claims -- was partially resolved by the California Supreme Court in *Adolph v. Uber Technologies, Inc.*, 14 Cal.5th 1104 (2023), which held that a plaintiff maintains standing to litigate non-individual PAGA claims in court even after individual claims are sent to arbitration.

Settlement patterns during this period also drew scrutiny. A significant number of PAGA settlements allocated 75% of the civil penalties to the Labor and Workforce Development Agency (LWDA) as required by statute, but the per-employee recovery to aggrieved workers was often minimal. Critics pointed to settlements in which millions in attorney fees were approved alongside per-worker distributions of less than $100. The LWDA itself began objecting to proposed settlements it deemed inadequate, exercising its authority under Labor Code section 2699(l)(2) to intervene. These dynamics set the stage for the comprehensive PAGA reform enacted through AB 2288 and SB 92 in mid-2024, which restructured penalty calculations, strengthened cure provisions, and introduced manageability requirements for PAGA trials.

> *"The pre-reform PAGA landscape became a system in which the volume of claims outpaced the judiciary's capacity to adjudicate them on the merits, producing pressure toward settlement regardless of the underlying strength of the claims."*

V. Remote Work Expense Reimbursement Litigation

Labor Code section 2802 requires employers to indemnify employees for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." The mass shift to remote work during the COVID pandemic, and the persistence of hybrid and fully remote arrangements into 2023-2024, generated a wave of class action litigation testing the boundaries of section 2802 in the home-office context.

The central legal question in these cases concerned which home-office expenses qualify as "necessary expenditures" under section 2802. Courts have long recognized that the statute encompasses expenses an employer requires or compels an employee to incur. In the remote work context, plaintiffs argued that internet service, cellular phone charges, home electricity, office furniture, and computer equipment all constituted reimbursable expenses when the employer required or permitted employees to work from home. Employers countered that many of these expenses were personal costs the employee would have incurred regardless of employment, and that section 2802 does not require reimbursement of expenses that are merely incidental to an employee's chosen living arrangement.

Several putative class actions filed in Los Angeles and San Francisco Superior Courts during 2023-2024 alleged that major technology, financial services, and media companies failed to reimburse remote employees for a pro-rata share of home internet costs, personal cell phone use for work purposes, and increased electricity consumption. Plaintiffs relied on the California Supreme Court's reasoning in *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554 (2007), which established that section 2802 requires reimbursement of the "reasonable percentage" of an employee's personal cell phone bill attributable to work use, and extended that principle to other shared-use

home expenses. Class certification proved contested, as defendants argued that individual issues predominated given the wide variation in each employee's home setup, internet plan, and personal-versus-work usage ratios.

PRACTICAL IMPLICATIONS

- Employers maintaining remote or hybrid arrangements should adopt written expense reimbursement policies specifying which categories of home-office expenses are covered and establishing a reasonable reimbursement methodology
- Flat-rate stipends may satisfy section 2802 if they reasonably approximate actual costs, but employers should document the basis for any fixed amount
- PAGA exposure remains significant even after the 2024 reforms -- employers should audit their Labor Code compliance proactively rather than waiting for a demand letter
- Pay transparency compliance requires ongoing monitoring of job postings and annual pay data reporting to the CRD
- Grooming and appearance policies should be reviewed against the expanded CROWN Act standards to eliminate facially neutral provisions that may have a disparate impact

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The legal landscape described reflects developments through the 2023-2024 period and may not reflect subsequent legislative or judicial changes. Consult qualified counsel for advice specific to your situation.

Practice	Employment Law
Topics	Pay Transparency · Paid Sick Leave · PAGA
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