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PRACTICE BRIEF · EMPLOYMENT LAW

Recent Developments in California Employment Law: 2025-2026

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California continues to set the national pace on employment regulation. The 2024 and 2025 legislative sessions produced a cluster of high-impact reforms that are now reshaping litigation strategy, compliance obligations, and the day-to-day employment relationship across industries. This annual review examines five developments that every California employer and employee should understand heading into the second half of 2026.

IN THIS ARTICLE

- I. PAGA Reform: AB 2288 & SB 92
- II. Non-Compete Ban: AB 1076 & SB 699
- III. SB 1100: Driver's License Restrictions in Hiring
- IV. EFAA Expansion in California Federal Courts
- V. AI in Hiring: FEHA Exposure and Algorithmic Discrimination

I. PAGA Reform: AB 2288 & SB 92

The Private Attorneys General Act of 2004 (Labor Code sections 2698-2699.8) has been the most consequential enforcement mechanism in California employment law for two decades. In 2024, the Legislature enacted **AB 2288** and **SB 92** as a negotiated reform package to avert a com-

peting ballot initiative that would have repealed PAGA entirely. The reforms, effective October 1, 2024 for claims filed on or after that date, fundamentally restructured how PAGA actions are initiated, managed, and resolved.

The most significant change is the new **standing requirement**. Under the prior regime, a single aggrieved employee could bring a representative action on behalf of all employees who suffered the same violation, even if the named plaintiff's individual claim was minor. AB 2288 now requires that the plaintiff have personally experienced each violation alleged in the complaint. This eliminates the practice of "stacking" claims, where a plaintiff who experienced a paystub deficiency under Labor Code section 226 could also pursue meal break violations under section 226.7 on behalf of employees even if the plaintiff never personally missed a meal period. The reform also introduces **manageability requirements** modeled on class certification principles, authorizing courts to limit the scope of a PAGA action to claims that can be efficiently managed on a representative basis.

The penalty structure has been recalibrated as well. AB 2288 caps penalties at **15% of the default statutory amount** for employers who took "all reasonable steps" to comply before receiving notice of the alleged violation, and at **30%** for employers who take corrective action after receiving PAGA notice but before a determination on the merits. The cure provisions in SB 92 create a structured early resolution pathway, allowing employers to cure certain categories of violations within a 33-business-day window after receiving the LWDA notice. If an employer demonstrates full compliance and makes affected employees whole, the action may be dismissed. These reforms do not eliminate PAGA's teeth, but they materially reduce the settlement leverage that made PAGA claims so formidable under the prior framework.

II. Non-Compete Ban: AB 1076 & SB 699

California has prohibited non-compete agreements since 1872 under **Business and Professions Code section 16600**, which provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." While this prohibition has long been a settled feature of California law, a pair of 2023 statutes — **AB 1076** and **SB 699**, both effective January 1, 2024 — significantly expanded the ban's reach and added affirmative compliance obligations.

SB 699 codified an aggressive choice-of-law position: any non-compete agreement is void and unenforceable against a California employee **regardless of where and when the contract was signed**. This means that an employee hired in Texas under a non-compete governed by Texas law who subsequently moves to California cannot be bound by that agreement. The statute further provides that any employer who attempts to enforce a void non-compete against a California-based employee commits a violation of California law, exposing the employer to liability even if the employer is based out-of-state and the contract was executed in a jurisdiction where such agreements are enforceable. This provision has generated a wave of declaratory relief actions, with California-based employees seeking judicial declarations that their prior employers' non-competes are void.

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AB 1076 added a **notification requirement**: by February 14, 2024, employers were required to individually notify in writing any current or former employee (who was employed after January 1, 2022) that any non-compete clause or agreement previously signed is void under California law. The notice must be delivered to the employee's last known address and email address. Failure to provide notice constitutes a per-employee violation under the unfair competition law (Business and Professions Code section 17200). Together, these statutes represent the most aggressive anti-non-compete posture of any state and have prompted multistate employers to undertake wholesale contract audits to identify and remediate non-compete provisions in offer letters, employment agreements, and equity incentive plans.

III. SB 1100: Driver's License Restrictions in Hiring

Effective January 1, 2025, **SB 1100** amended the California Fair Employment and Housing Act (Government Code section 12940 et seq.) to prohibit employers from including a requirement for a driver's license in any job advertisement, posting, application, or other material unless **driving is an essential function of the job** and the employer reasonably expects that the job function cannot be comparably performed by alternative forms of transportation, such as public transit, ride-sharing, bicycling, or walking.

The statute targets a pervasive screening practice that functioned as an indirect barrier to employment for individuals who do not hold driver's licenses, a population that disproportionately includes people with disabilities, low-income individuals, undocumented immigrants, elderly applicants, and residents of urban areas with robust public transit. By framing the prohibition within the FEHA, the Legislature ensured that violations carry the same enforcement mechanisms and remedies available for other forms of employment discrimination, including administrative complaints to the Civil Rights Department (CRD), private right of action, and the full range of FEHA remedies including compensatory damages, injunctive relief, and attorney's fees under Government Code section 12965.

For employers, the compliance obligation is twofold. First, all job postings and applications must be audited to remove driver's license requirements unless a position-specific analysis confirms that driving is an essential, non-substitutable function. Second, employers should document the business justification for any retained driver's license requirement in case the practice is challenged. The CRD has signaled that it will scrutinize driver's license requirements under the same framework used for other facially neutral job requirements that produce disparate impact, meaning that employers bear the burden of demonstrating that the requirement is job-related and consistent with business necessity under Government Code section 12940(a)(1).

IV. EFAA Expansion in California Federal Courts

The **Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021** (9 U.S.C. sections 401-402), signed into law on March 3, 2022, allows individuals alleging sexual assault or sexual harassment to void pre-dispute arbitration agreements and class/collective action

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waivers at their election. The statute amended the Federal Arbitration Act and applies to any dispute or claim that arises or accrues on or after March 3, 2022, regardless of when the arbitration agreement was executed.

The Ninth Circuit has been at the forefront of interpreting the EFAA's scope in ways that significantly expand its practical impact for California employees. In *Johnson v. Everyrealm, Inc.* (S.D.N.Y. 2023) and subsequent decisions, federal courts have grappled with whether the EFAA invalidates the entire arbitration agreement or only the claims covered by the statute. The emerging majority position in the Ninth Circuit follows the reasoning that when a case includes both EFAA-qualifying claims (sexual harassment) and non-EFAA claims (wage and hour, discrimination on other bases), the plaintiff's election to void the arbitration agreement applies to the **entire dispute**, not merely the sexual harassment allegations. This interpretation rests on the statute's text, which refers to invalidating arbitration agreements with respect to a "case" rather than individual "claims."

The practical consequence for California employers is substantial. An employee who includes a sexual harassment claim alongside PAGA claims, wage violations, or non-sexual discrimination claims can potentially defeat an employer's motion to compel arbitration on all counts by invoking the EFAA. This has prompted a strategic shift in how plaintiffs' attorneys structure complaints. Defense counsel, meanwhile, have argued for a narrower reading under which only the sexual harassment claim escapes arbitration while the remaining claims proceed separately. The Ninth Circuit's forthcoming en banc consideration of this issue is expected to provide definitive guidance, but until that decision issues, the EFAA remains one of the most powerful tools available to California employees seeking to litigate rather than arbitrate workplace disputes.

V. AI in Hiring: FEHA Exposure and Algorithmic Discrimination

California has not yet enacted a standalone statute regulating artificial intelligence in employment decisions, but the existing framework under the **Fair Employment and Housing Act** already provides robust grounds for challenging discriminatory outcomes produced by AI-powered hiring tools. The Civil Rights Department (formerly DFEH) has issued guidance confirming that an employer's use of automated decision-making tools — including resume screening algorithms, AI-driven video interview analysis platforms, and predictive analytics for candidate ranking — does not insulate the employer from FEHA liability if those tools produce outcomes that discriminate on the basis of a protected characteristic.

Under FEHA's disparate impact framework (Government Code section 12940(a)), a facially neutral employment practice that disproportionately excludes applicants of a particular race, gender, age, disability status, or other protected class is unlawful unless the employer can demonstrate that the practice is job-related and consistent with business necessity, and the plaintiff cannot identify a less discriminatory alternative. The CRD has emphasized that algorithmic bias satisfies this framework: if an AI screening tool systematically scores female candidates lower than male

candidates for a software engineering role, the employer bears the same burden of justification it would face for any other screening criterion that produces a statistically significant disparate impact.

The practical challenge is transparency. Most employers that deploy AI hiring tools license them from third-party vendors and have limited visibility into the model's training data, weighting criteria, or validation methodology. The CRD's position is that this opacity does not shift liability — the employer remains the decision-maker under FEHA and cannot delegate its non-discrimination obligations to a vendor. Employers using AI hiring tools should demand algorithmic impact assessments from their vendors, conduct regular adverse impact analyses consistent with the EEOC's Uniform Guidelines on Employee Selection Procedures (29 C.F.R. Part 1607), and ensure that any automated screening criteria can be independently validated as job-related. Proposed legislation modeled on New York City's Local Law 144 — which requires bias audits of automated employment decision tools — is currently advancing in the California Legislature and may impose more specific compliance obligations by 2027.

The legal landscape described reflects developments through Q3 2026 and may not reflect subsequent legislative, regulatory, or judicial developments. Consult qualified counsel for advice specific to your situation.

Practice	Employment Law
Topics	PAGA · Non-Compete · Arbitration · Artificial Intelligence · FEHA
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