



**SYMMETRY**  
HR Outsourcing



## THE 2021 SYMMETRY CALIFORNIA HR UPDATE

A Special Report for Symmetry California Clients

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“California: God’s Gift to Employment Lawyers”—*Peter Cappelli, Wharton School of Business*

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## THE 2021 SYMMETRY CALIFORNIA HR UPDATE

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## COVID-19 Laws & Regulations

### SB 1159 – Workers' Compensation COVID-19 Presumption



This law went into effect on September 17, 2020 and expires January 1, 2023. The two major components, generally, are:

- Employees who suffer a COVID-19 related illness or death are covered, in most circumstances, by Workers' Compensation dating back to July 7, 2020; and

- SB 1159 requires employers to notify their claims administrator whenever the employer knows or

reasonably should know that an employee has tested positive for COVID-19. The report should be made within 3 days of the collection date.

#### Who's Covered?

To apply, an employee must suffer an illness or death resulting from COVID-19 and meet all the following conditions:

- The employee tests positive within 14 days after the employee last worked at the employee's place of employment at the employer's direction;
- The day on which the employee performed work at the employer's direction was on or after July 6, 2020; and
- The employee's positive test occurred during a COVID-19 outbreak at the employee's place of employment.

An outbreak exists if within 14 calendar days, one of the following occurs:

- For employers with 100 or fewer employees at a specific worksite, four employees test positive for COVID-19;
- If an employer has more than 100 employees at a specific worksite, 4 percent of the number of employees who reported to the specific location test positive for COVID-19; or
- A specific place of employment is ordered to close by a local public health department, the California Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.
- Employers are required to retroactively report back to July 6, 2020.



### [AB 685 – Notice to employees of potential COVID-19 exposure](#)

AB 685 takes effect on January 1, 2021 and will expire in two years on January 1, 2022.

If an employer receives a notice of potential exposure to COVID-19, the employer must within one day provide written notice to all employees and subcontracted employees who were on the premises at the same worksite within the “infectious period.” The notice must contain information about what COVID-19 related benefits the employee is entitled to under federal, state, and local laws, and the employer’s disinfection and safety plan. Employers are required to keep a copy of all notices provided to employees for three years.

#### *Local Health Department notice requirements*

Under the new law, if the employer is notified of a number of COVID-19 cases that meet the definition of a COVID-19 outbreak as defined by the State Department of Public Health, the employer has 48 hours to notify the local public health agency.

#### *Employers’ Reporting Requirements*

Employers must report to their workers’ compensation carrier within 3 business days when:

An employee has tested positive (employers should not include any personally identifiable information about the employee unless the employee files a workers’ compensation claim); AND

The date the employee’s specimen was collected for testing; AND

The address(es) of location(s) the employee worked during the past 14 days preceding the date of the positive test.

The notice requires that employers report the highest number of employees who reported to the employee’s specific place of employment in the 45-day period preceding the last day the employee worked at the location.



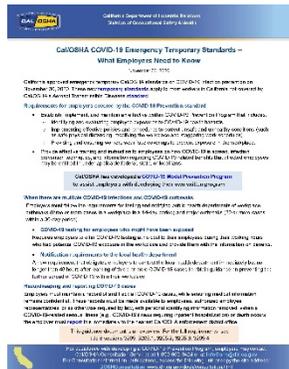
Employers must give written notice to all employees\* within one business day upon learning of potential exposure to COVID-19 in the workplace.

\*Employees who were present at the same worksite within the infectious period as a qualifying individual.

A qualifying individual is any person who has any of the following:

- A laboratory-confirmed case of COVID-19;
- A positive COVID-19 diagnosis from a licensed health care provider;
- A COVID-19-related order to isolate provided by a public health official; or
- Died due to COVID-19, as determined by a county public health department or per inclusion in a county’s COVID-19 statistics.

### Cal/OSHA Emergency COVID-19 Regulations effective December 2020



California’s Occupational Safety and Health Standards Board has passed emergency regulations requiring employers to implement a detailed written COVID-19 Prevention Program (CPP) and specifying provisions which must be included. These include new requirements that go beyond those imposed by existing federal, state and local statutes, ordinances and orders.

The emergency regulations are effective immediately and will continue in effect for 180 days while permanent regulations are under consideration.

The new regulations apply to all California employees, except those working alone without contact with other persons, working from home, or working in workplaces (such as hospitals, medical offices and medical labs) which are covered by existing regulations applicable to workplaces at high risk for transmission of airborne diseases.

Model CPP Document for Download

[You can download a copy of Cal-OSHA’s Model CPP document here.](#)

If you need guidance in completing this document, contact your Symmetry HR Advisor, or e-mail us: [info@symmetryhro.com](mailto:info@symmetryhro.com).

## Wage & Hour

### Minimum Salary for Exempt Employees

To meet the salary test (there are other tests) an exempt employee must be paid a monthly salary that is at least twice the state minimum wage for full-time employment.

Effective Date	Employers With 25 or fewer employees	Employers with more than 25 employees
January 1, 2020	\$49,920 per year	\$54,080 per year
January 1, 2021	\$54,080 per year	\$58,240 per year
January 1, 2022	\$58,240 per year	\$62,400 per year
January 1, 2023	\$62,400 per year	\$66,560 per year

### Minimum Wage Changes – Both State and Municipality - effective January 1, 2021

There are a number of minimum wage changes – both at the state level and in a number of cities and other municipalities. To see the current and new minimum wage levels, [click here](#).

### AB 1947 – Extension of time to file complaints; awarding of attorney fees

Notably, AB 1947 extends the time an individual can file a complaint of discrimination or retaliation with the California Division of Labor Standards Enforcement (DLSE), also known as the California Labor Commissioner. Under current law, workers alleging they were discriminated or retaliated against in violation of any Labor Commissioner-enforced law have six months to file a complaint with the Labor Commissioner, but beginning **January 1, 2021**, AB 1947 extends that time to one year.

A couple of narrow industry-specific rest break bills were signed this year. AB 1512 allows security guards to remain on the premises during rest periods and to remain on call during the rest period. If work interrupts the rest period, the security guard must be permitted to restart the rest period as soon as practicable. AB 2479 extends a limited on-call rest break exception for safety-sensitive positions at petroleum facilities to 2026.

### “Unlimited” Vacation Policies

In recent years, “unlimited” vacation policies have gained traction in California, becoming increasingly popular for providing employees with limitless paid vacation or paid time off (PTO). A recent California Court of Appeal decision gives employers some guidance on these policies — it held that an employer’s supposed “unlimited” vacation policy wasn’t unlimited; it actually

had an implied cap, and the employer violated the Labor Code when it failed to pay out the unused vacation. But it also went out of its way to say there might be some circumstances under which unlimited policies are valid and provided some principles employers can apply to their policies (*McPherson v. EF Intercultural Foundation, Inc.*, 47 Cal.App.5th 243 (2020)).



Unlimited vacation policies place no maximum limit or cap on vacation time, and employees can take time off whenever they like provided they still successfully complete all of their tasks — but employees also don’t accrue vacation time, meaning that theoretically, there’s no “vesting” or pay out of unused time when the employment relationship ends as is required by Labor Code section 227.3 under normal accrual vacation policies.

In this case, the company had a vacation policy for employees, but the policy didn’t apply to area managers, who could take time off with pay but didn’t accrue vacation hours. The managers didn’t have to use the time off request system like other employees, nor did they keep track of the days used; they were simply required to notify their supervisors before taking time off. The plaintiffs, all area managers, argued that EF’s unwritten “unlimited” paid vacation policy that applied to them was actually an unlawful “use it or lose it” policy.

Employers also should note that the factors focus not only on what the policy says, but also how the policy is applied in practice — so simply drafting a good written policy isn’t enough. As in this case, courts will look at how the policy was carried out and use principles of equity and fairness in resolving any vacation pay disputes.

## Leaves of Absence

### [SB 1383 – California Family Rights Act](#)

SB 1383 significantly expands the California Family Rights Act (CFRA) beginning **January 1, 2021**. This bill expands employer coverage to include all employers with **five** or more employees, which is much fewer than the previous 50 or more employees' requirement. This is a major development. Small businesses will need to quickly get up to speed on CFRA's requirements in order to be ready by January 1.

SB 1383 also expands the definition of "family members" beyond what is covered under the federal Family and Medical Leave Act (FMLA). **Now included are grandparents, grandchildren, siblings, domestic partners, and adult children over 18 years old.** This will impact larger employers who will have to administer CFRA and FMLA separately in some cases. For example, an employee can take 12 weeks of leave to care for a sibling under the CFRA and then another separate 12 weeks to cover an illness under the FMLA for total of 24 weeks of protected leave. Employers, big and small, should become familiar with the law's details and be prepared to revise or implement compliant policies and practices by 2021.

### [AB 2017 – Kin Care Leave](#)

Currently, an employee can use up to half of their accrued sick leave to care for a family member, also known as "kin care." AB 2017 revises the law to clarify that the employee has the right to designate sick leave as kin care, or not, in order to avoid a designation error and unintentional draw down of kin care time when the sick days were actually taken for personal sick leave.

This law says the designation of sick leave taken under Labor Code section 233 is at the sole discretion of the employee. Therefore, the employer may not designate sick leave as Kin Care leave by itself in order to quickly deplete the Kin Care leave available. Any Kin Care leave policies and related policies should be updated accordingly.

### [AB 2992 – Leaves for Victims of domestic violence, sexual assault, or stalking](#)

AB 2992 expands the right to take time off work under Labor Code section 230. The new law permits employees to take time off if they are victims "of a crime that caused physical injury or that caused mental injury and a threat of physical injury" or for anyone "whose immediate family member is deceased as the direct result of a crime." Employers must update any relevant crime victim leave policies to comply with the new requirements.

## Non-Harassment Training

### Non Harassment Training Must Be Completed by January 1, 2021

All employers with 5 or more employees must have complied with California's Non-Harassment Training Law by the end of 2020:

- Managers and supervisors must complete the 2 hours training.
- All employees must complete the 1 hour training.

## Other Important Laws & Notices

### SB 973 – Employer Pay Data Reporting Requirements

SB 973 requires employers with 100 or more employees (that are also required to file the federal EEO-1 report with the Equal Employment Opportunity Commission), to report the following demographic and pay data information to the California Department of Fair Employment and Housing (DFEH):

The number of employees by race, ethnicity and sex in 10 different job title categories (Component 1); and

The number of employees by race, ethnicity and sex, whose annual earnings fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey (Component 2).

### Worker Classification

It was only last year that the biggest labor law development was the new worker classification law, AB 5, which codified the California Supreme Court's Dynamex ruling, using the ABC test to determine whether a worker is an employee or independent contractor, while at the same time creating numerous exceptions to the test. Early in this year's legislative session, roughly 30 bills were introduced to either repeal or revise AB 5. In the end, only one bill survived and was signed into law, AB 2257. The bill doesn't change the underlying framework of AB 5, but it makes some revisions and clarifications to some of the existing exceptions and added new ones. AB 2257 went into effect when it was signed on September 4, 2020.

### AB 1281 - California Consumer Privacy Act (CCPA)

The CCPA provides California consumers rights over how and whether the personal data they provide to businesses is collected, retained and sold. Because its definitions are broad, employee data that employers collect for employment purposes was included. Last year, AB 25 largely exempted employee data from the CCPA for one year, and now AB 1281 extends the

exemption for one more year to the end of 2021. Employers must still comply with the CCPA's requirement to provide notice before, or at the time of, collecting personal information from an applicant or employee that describes every category of information that will be collected and the purposes for which it will be used. CCPA regulations describing how employers can give a compliant notice are now in effect.

### CalSavers Retirement Savings Program

CalSavers is a retirement savings program for private sector workers whose employers do not offer a retirement plan. This program gives employers an easy way to help their employees save



for retirement, with no employer fees, no fiduciary responsibility, and minimal ongoing responsibilities. CalSavers is exempt from the Employee Retirement Income Security Act.

Employers with five or more employees must participate in CalSavers if they do not already have a workplace retirement plan. The deadline to register is based on the size of the business.

Due to the COVID-19 pandemic, the first registration deadline was extended to September 30, 2020, for employers with more than 100 employees.

CalSavers deadlines by business size:

Size of Business	Deadline
Over 100 employees	September 30, 2020
Over 50 employees	June 30, 2021
5 or more employees	June 30, 2022

## Updates to Your Employee Handbook

Based on these and other changes, we are recommending all employers update their handbooks. To get started, e-mail us at [info@symmetryhro.com](mailto:info@symmetryhro.com).

## Resources and Other Articles of Interest

[5 Tips for Safely Reopening Your Office](#), Joseph Grenny, Harvard Business Review

[The Truth About Bambee](#), The Tim Sackett Project

[The Divide Between What Employers and Employees Think About Returning to Work](#), HR Daily Advisor



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