

FENWICK

Employment Annual Year-End Review

January 22, 2026

Panelists

[Sheeva Ghassemi](#)



Partner, Litigation

[Matthew Damm](#)



Partner, Litigation

[Daniel J. McCoy](#)



Partner, Litigation

[Reanne Swafford-Harris](#)



Counsel, Litigation

[Jennifer Gutenberg](#)



Associate, Litigation

[Shirley Luk](#)



Associate, Litigation

[Oliver Katz](#)



Associate, Litigation

Agenda

1. Worker Pay
2. Employee Rights and Notices
3. EEO and Discrimination
4. Leaves of Absence/PTO
5. Wage and Hour
6. New York and Washington Law Updates
7. Trends
8. Q&A

FENWICK

Worker Pay

AB 692: Stay-or-Pay Ban (CA) – Overview

- Largely eliminates stay-or-pay provisions in employment contracts
- Effective 1/1/26, cannot include in any employment contract (or require to execute as a condition of employment/work relationship) a term that requires employee to repay/pay employer, training provider, or debt collector for a debt if employee's employment or work relationship terminates
- Also, cannot impose “any penalty, fee, or cost” on employee if employment/work relationship terminates
- Such terms equate to a non-compete (unlawful restraint of trade) under CA B&P Code § 16600 and void
- Private right of action
- Penalties of greater of actual damages or up to \$5,000 in penalties per employee; also, injunctive relief and attorney's fees and costs

AB 692: Stay-or-Pay Ban (CA) – Exceptions

- Limited exceptions for:
 - tuition payments (subject to special requirements);
 - government loan repayment or forgiveness programs; and
 - discretionary bonuses (subject to special requirements)
- Discretionary bonuses (e.g., signing, retention, and relocation bonuses):
 - at the outset of employment; and
 - unrelated to job performance
 - *If want discretionary bonus repayment arrangement after employment begins, this exception is unavailable, and arrangement is prohibited*

AB 692: Stay-or-Pay Ban (CA) – Bonuses

- For discretionary bonuses at outset of employment, employers must adhere to below to ensure bonuses repayable upon termination:
 - (i) include repayment terms in separate, standalone agreement;
 - (ii) inform employee in writing of right to consult counsel and provide at least 5 business days to consider and sign agreement;
 - (iii) prorate repayment obligation based on remaining term of retention period (up to 2 years);
 - (iv) impose no interest accrual;
 - (v) provide employee option to defer receiving payment until end of retention period with no repayment obligation; and
 - (vi) require repayment only if employee voluntarily resigns or is terminated for misconduct (defined in CA UI Code)
 - *Misconduct = willful or wanton disregard of employer's interests, or such carelessness or negligence as to manifest equal culpability*

AB 692: Stay-or-Pay Ban (CA) – Tuition

- For tuition reimbursement, employers must adhere to below to ensure bonuses repayable upon termination
- The contract:
 - (i) is offered separately from any contract for employment;
 - (ii) does not require obtaining transferable credential as condition of employment;
 - (iii) specifies repayment amount before employee agrees to contract, and repayment amount does not exceed cost to employer of transferable credential received by employee;
 - (iv) provides for a prorated repayment amount during any required employment period that is proportional to total repayment amount and length of required employment period and does not require accelerated payment schedule if employee separates from employment; and
 - (v) does not require repayment to employer by employee if they are terminated, except if employee is terminated for misconduct

AB 692: Stay-or-Pay Ban (CA) – Takeaways

- Analyze programs with any repayment obligation
- Follow requirements of exceptions
- Consider restructuring programs – e.g., pay retention bonus at end of retention period so no repayment needed
- Scope of the law much broader than likely intended
- Unlikely to get more clarity on scope

SB 642: Equal Pay Act Revisions (CA)

- CA's Equal Pay Act prohibits wage discrimination and requires pay transparency with applicants and employees
- SB 642 amends the Act, effective 1/1/26:
 - Revises definition of "pay scale"—must be included in job postings and disclosed to applicants and employees upon request—as "a good faith estimate of salary or hourly wage range that employer reasonably expects to pay for position upon hire"
 - Redefines "wages" and "wage rates" (for purposes of evaluating pay discrimination) as "all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits"
 - *Do not need to include additional forms of compensation in posting of pay scale*
 - Prohibits employers from paying employees at wage rates less than the rates paid to employees of "another sex" (replacing "opposite sex" in Act)
 - Expands time limit to bring a claim under the Act from 2 to 3 years and further allows an employee to recover for the period of violation, not exceeding 6 years
- *New changes will require reassessment of pay scale and evaluation of additional forms of compensation*

SB 464: Pay Data Reporting Updates (CA)

- SB 464 amends (as of 1/1/26) existing requirements applicable to employers with 100 or more employees that must report certain employee pay data to the CA Civil Rights Department (CRD)
- Covered employers must collect and store demographic information separate from employee personnel records
 - *Check how you store this information and make changes as needed*
- Starting 1/1/27, number of compulsory job categories in pay data reports will increase from 10 to 23, including through expansion of general categories like professionals, executive technicians, and others into several new subcategories
 - *Likely will require reassessing job titles for reporting purposes*
 - *Leave sufficient time to do so*
- Courts (if requested by CRD) must impose a civil penalty against employer that fails to file report \$100-\$200/employee depending on if first or subsequent violation

FENWICK

Employee Rights and Notices

The Big Picture

- California continues to expand employee notices and protections
- Focus areas:
 - Expanded CalWARN notice requirements
 - “Workplace Know Your Rights” notices
 - Immigration-related employee obligations
 - Personnel file requirements

SB 617: Expanded CalWARN Notice Requirements

- Applies to mass layoffs, relocations, and plant closures covered by CalWARN
- Notices must address worker transition support and food assistance
 - Coordination of services through LWDB
 - CalFresh information
 - Contact information for LWDB and employer
 - Description of rapid response activities
- Practical considerations:
 - Update notices
 - Ample lead time to coordinate services

“Workplace Know Your Rights” Notice

- Beginning February 1, 2026, and annually thereafter, employers must provide employees with a [“Workplace Know Your Rights” notice](#)
- New rules related to employee arrests or detention
- Must be provided in languages commonly spoken by employees
- Applies to all employers, regardless of size
- Penalties for non-compliance
- Practical considerations:
 - Update documentation
 - Collect employee emergency contact information
 - Revise recordkeeping practices

H-1B Employees: Costs, Process & Employer Duties

- Key changes
 - DHS will adopt a wage-weighted lottery system
 - Presidential Proclamation may result in increased fees
 - The State Department will require mandatory in-person interviews
 - The State Department will conduct expanded vetting
- Practical considerations:
 - Identify who may require sponsorship
 - Determine applicable wage levels
 - Consider potential financial impact

SB 513: Expanded Scope of Personnel Files

- “Personnel records” now include education and training records
- Applies only if the employer already maintains such records
- Penalties for non-compliance
- Practical considerations:
 - Review recordkeeping practices
 - Update personnel documentation system
 - Train key stakeholders

FENWICK

EEO and Discrimination

CA Fair Employment Housing Act's (FEHA) New Artificial Intelligence (AI) Regulations

- Effective as of October 1, 2025
- The regulations, finalized by the California Civil Rights Council, aim to prevent algorithmic bias and discrimination in employment decisions, including recruiting, hiring, promotions, and other personnel actions
- Key Aspects
 - Prohibits discriminatory use of AI and automated decision systems (ADS) in employment
 - Holds company-vendors accountable as well
 - Requires
 - Reasonable accommodations to applicants and employees
 - Notice to applicants and employees when AI is used to make employment-related decisions
 - Recordkeeping of ADS data and bias testing
 - Protective measures encouraged (not required)

SB 477: FEHA Enforcement Procedure Updates

- Effective: January 1, 2026
- Overview: Updates California Civil Rights Department (CRD) enforcement and complaint handling procedures under FEHA
- Key Provisions:
 - Defines “group or class complaint” as a complaint alleging a pattern or practice of discrimination
 - Clarifies right-to-sue deadlines:
 - Individual complaints: CRD must issue notice within 1 year
 - Group/class complaints: CRD must issue notice within 2 years
 - Requires CRD to issue a right-to-sue notice:
 - Upon request by the complainant in a related director-filed or group/class complaint
 - Or after the matter is fully resolved and all related proceedings and appeals conclude if no request is made

SB 303: Bias Mitigation Training Safe Harbor

- Effective: January 1, 2026
- Amends FEHA to address employer-led bias mitigation training
- Purpose:
 - To promote proactive bias mitigation strategies in the workplace
 - To remove legal uncertainty surrounding participation in trainings aimed at addressing bias and discrimination prevention
- Key Provisions:
 - An employee's assessment, testing, admission, or acknowledgement of their own personal bias, will not by itself constitute unlawful discrimination under FEHA
- Provided the admission was:
 - A part of a bias mitigation training
 - Solicited or made in good faith

AB 250: “Look-Back” Window for Adult Sexual Assault Claims

- Effective: January 1, 2026 – December 31, 2027
- Overview: Creates a two-year window allowing adult survivors to file civil claims for past sexual assaults, even if the statute of limitations has expired, where there was an institutional cover-up by a private entity
- Key Provisions:
 - Who it helps: Adult survivors of sexual assault
 - What it does: Revives time-barred civil claims if the assault was concealed by a private employer, business, church, or other institution
 - Liable parties: Private individuals and private-sector organizations

AB 288 Update: Intended Expansion of PERB's Authority + NLRB's Response

- Overview (as enacted):
 - Intended to take effect January 1, 2026, and was aimed to expand the California Public Employment Relations Board (PERB) authority into certain private-sector labor disputes, traditionally under the National Labor Relations Board (NLRB)
 - Including deciding unfair labor practice cases, certifying unions, conducting elections, and ordering remedies if the NLRB failed to act within six months
- Federal Court Decision:
 - On December 26, 2025, a federal court granted the NLRB's request for a preliminary injunction, blocking California from enforcing the provisions that would have given PERB jurisdiction in scenarios such as NLRB quorum loss, loss of independence, and processing delays
 - For now:
 - The NLRB retains control over most private-sector labor disputes
 - Only narrow, court-approved circumstances would allow PERB jurisdiction

FENWICK

Leaves of Absence/PTO

Expanded Paid Sick and “Safe Time” (AB 406)

- Effective January 1, 2026
- Amendments to the Healthy Workplaces, Healthy Families Act (requiring employers to provide paid sick leave for an employee's own illness, preventive care, or the care of a family member)
- Employees who are victims of certain crimes, or who have family members who are victims, may take leave to attend judicial proceedings related to that crime, including post-arrest hearings, plea agreements, sentencing, or post-conviction matters
- “Victim”: a person against whom a violent felony, serious felony, and/or felony theft or embezzlement is committed
 - Also includes a person who suffers direct or threatened physical, psychological, or financial harm due to the commission or attempted commission of certain crimes

Expanded Paid Sick and “Safe Time” (AB 406)

- Related to a qualifying act of violence
- Employees may also take leave to seek or obtain, or assist a family member to seek or obtain:
 - Medical attention for or to recover from injuries
 - Psychological counseling or mental health services
 - Services from domestic violence shelters, sexual assault programs, or other advocacy organizations
 - Civil or criminal legal services, including to seek restraining orders and meet with law enforcement, prosecutors, or victim services providers
- Other reasons for leave:
 - To participate in safety planning
 - To relocate or secure a new residence
 - To seek, obtain, or provide childcare or care to a dependent adult if necessary to ensure the safety of the child or dependent adult

Expanded Paid Sick and “Safe Time” (AB 406)

- Additional paid sick and safe time covered uses that were effective October 1, 2025
- An employee is serving jury duty
 - Was previously a protected form of leave; now covered by this law that allows use of paid sick time
- An employee is appearing in court to comply with a subpoena or other court order as a witness in any judicial proceeding, including if the employee is a victim
 - “Victim”: a person against whom a crime has been committed

Expanded Paid Family Leave Benefits (SB 590)

- Beginning July 1, 2028
- CA employees may seek paid family leave (PFL) benefits to care for a “designated person”
- “Designated person”: a person “related by blood or whose association with the individual is the equivalent of a family relationship”
- To receive PFL benefits to care for a designated person, the employee must identify the designated person and attest, under penalty of perjury:
 - (i) how the employee is related by blood to the designated person; or
 - (ii) how the employee’s association with the designated person is the equivalent of a family relationship

Employer Considerations

- Multi-state employers must harmonize local paid sick leave ordinances with CA's expanded protections
- HRIS, payroll and time reporting systems may need to be updated to capture new categories of leave and to ensure accurate tracking and reporting
- Updates to handbooks/policies to capture expansions to the law
- Victim-related leave requests often involve sensitive personal information; employers should train managers/supervisors on their confidentiality obligations

FENWICK

Wage and Hour

Wage and Hour – State Minimum Wage Increases

- CA Minimum Wage Increase – Effective January 1, 2026
 - \$16.90/hour (employers of all sizes)
 - Watch out for local minimum wage increases:
 - Mountain View: \$19.70/hour (1/1/26)
 - Palo Alto: \$18.70/hour (1/1/26)
 - San Francisco (will increase 7/1/26 based on Consumer Price Index)
 - Los Angeles (will increase 7/1/26 based on Consumer Price Index)
- CA Minimum Exempt Salary Increase – Effective January 1, 2026
 - \$70,304/year
 - Computer Software Employees = \$122,573.13/year

Wage and Hour – State Minimum Wage Increases

- NY Minimum Wage Increase – Effective January 1, 2026
 - NYC, Long Island, and Westchester: \$17/hour – *Increased from \$16.50/hour*
 - Remainder of State: \$16/hour – *Increased from \$15/hour*
- NY Minimum Exempt Salary Increase – Effective January 1, 2026
 - NYC, Long Island, and Westchester: \$1,275.50/week or \$66,300/year – *Increased from \$1,237.50/week or \$64,350/year*
 - Remainder of State: \$\$1,199.10/week or \$62,353.20/year – *Increased from \$1,161.65/week or \$60,405.80/year*
- *Looking to the Future:* NYC minimum wage to \$20/hour in 2027 (Mamdani campaign pledge)

Wage and Hour – State Minimum Wage Increases

- Washington Minimum Wage Increase – Effective January 1, 2026
 - \$17.13/hour – *Increased from \$16.66*
 - Watch out for local minimum wage increases:
 - Seattle: \$21.30/hour
 - Tukwila: Up to \$21.65/hour
- Washington Minimum Exempt Salary Increase – Effective January 1, 2026
 - \$80,168.40 – *Increased from \$77,968.80/year*
 - Computer Professionals: If paid an hourly rate and not salaried, \$56.96/hour
- Washington, D.C. Non-Compete Salary Threshold
 - \$126,858.93 for employees; \$317,147.09 for contractors
- Moonlighting Compensation Threshold
 - \$34.26/hour

FENWICK

New York and Washington Law Updates

New York 2025 Recap

- New York Paid Prenatal Leave Law (effective as of January 1, 2025)
 - 20 hours of leave to receive healthcare services during pregnancy or related to pregnancy
 - Available on an hourly basis
 - Only available to the employee receiving prenatal care (no caregiver leave)
 - Allotment is in addition to New York Safe and Sick Leave + New York State Paid Family Leave
 - Employees are **not** required to submit supporting medical documents and employers cannot ask employees to disclose confidential information about their health conditions
- Covid Leave
 - No longer required to provide paid Covid leave

New York 2026

- New York Fair Credit Reporting Act
 - No obtaining or using credit history in hiring and personnel decisions
 - Credit worthiness
 - Credit standing
 - Credit history or payments
 - Credit score
 - Info. from debts, bankruptcies, judgments or liens
 - Consumer Reporting Agencies (e.g. background check companies)
 - No reports containing credit history
 - Subject to challenge (FCRA)
 - Exceptions
 - Takes effect April 18, 2026

New York 2026

- Disparate Impact Discrimination
 - New York State legislation formally codifying disparate impact liability under the New York State Human Rights Law (NYSHRL)
 - Discriminatory effect (no motive required):
 - *An employment practice that “actually or predictably” results in a disparate impact on a group of persons because of their membership in a protected class*
 - Employer must establish practice is job-related for the position and consistent with business necessity. Even if established, employee may still prevail by showing less discriminatory alternative
 - Effective as of December 19, 2025
 - Seen as direct response to both AI screening tools and the EEOC moving away from disparate impact theories under federal statutes

New York 2026

- “Trapped at Work Act”
 - What are training employment repayment agreement (TRAPS)?
 - Amends the New York Labor Law to ban “employment promissory notes” (i.e., agreements or contract provisions obligating employees to pay employers if they depart before a specified period)
 - Prohibited if reimbursement of training costs are tied to continued employment
 - Exceptions:
 - Repayment of advances made to the worker that are unrelated to training;
 - Repayment for property sold or leased by the employer to the worker;
 - Sabbatical agreements for educational personnel; and
 - Collective bargaining agreements
 - Signing and relocation bonuses are still OK
 - Effective December 19, 2025

New York 2026

- New York Earned Safe and Sick Time Act (ESSTA)
 - 32 hours of unpaid leave
 - Plus paid safe and sick leave and parental leave
 - Available immediately; no accrual
 - Apply paid leave first, then unpaid leave, unless requested by employee
 - No carryover requirement; amount resets annually
 - Uses:
 - Caregiving of minor child or care recipient
 - Workplace violence
 - Public disasters that result in closure of workplace

On the Horizon in New York in 2026

- Non-compete ban
 - New York City – campaign pledge of Mamdani
 - New York State – July of 2025, NY Senate passed ban for workers earning > \$500k
 - Not on Governor Hochul's desk
- NYC new pay equity reporting
 - Employers with 200 or more employees in NYC will be required to submit yearly reports that disclose their employees' race, ethnicity and gender by job category and pay range

Washington 2025 Recap

- Restricting Low-Wage Workers from Moonlighting
- Compensation and Benefits in Job Posting
 - Notice of violative job posting to employers first
 - Employer opportunity to cure
 - Different approach to remedies for a violation

Washington 2026

- Washington Paid Family and Medical Leave Requirements
 - Expanded job restoration protection
 - Continuation of health benefits
 - Reduced minimum claim duration
 - Restrictions on leave stacking

Washington 2026

- Workplace Violence in Healthcare
 - Frequent and detailed review of workplace violence incidents
 - Investigation requirements
 - Reporting requirements
 - Annual review requirements

FENWICK

Trends

Looking Forward: 2026 Trends and Considerations

- We anticipate continued aggressive issuance of agency Opinions and Guidance, and WH Exec Orders
 - Expect healthy mix of publications that are both business/employer and employee-friendly
 - Continued intense focus on immigration reform
- OFCCP:
 - In-progress Congressional budget negotiations have earmarked funds (\$100m) to re-start the office
- It's an election year
 - Be mindful of workplace political discourse (including political affiliation discrimination risks)
- Dep't. of Labor Leadership Tumult
 - Sec'y Chavez-DeRemer under investigation, but do not anticipate that a potential leadership change would alter overall administration strategy

Looking Forward: 2026 Trends and Considerations

- Noncompetes:
 - Federal law unification unlikely
 - Continued state-by-state analysis, made more complex by employees with material contacts in multiple states
- Salary Transparency Laws
 - Steady, state-by-state increase (15+ states; more to follow). The laws are here to stay
 - State law variance as to what must be disclosed, such that a 50-state consistent approach, anchoring to the broadest law(s), is likely most efficient for employers with highly distributed workforces

FENWICK