

# California Orthopaedics Association

## Chaptered Bills 2019 - Affecting Employers

### [AB 5](#)

#### **(Gonzalez D) Worker status: employees and independent contractors.**

**Status:** 9/18/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 296, Statutes of 2019.

**Summary:** Would state the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello). The bill would exempt specified occupations from the application of Dynamex, and would instead provide that these occupations are governed by Borello.

### [AB 9](#)

#### **(Reyes D) Employment discrimination: limitation of actions.**

**Status:** 10/10/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 709, Statutes of 2019.

**Summary:** The California Fair Employment and Housing Act makes specified employment and housing practices unlawful, including discrimination against or harassment of employees and tenants, among others. Existing law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a verified complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred, unless otherwise specified. This bill would extend the above-described period to 3 years for complaints alleging employment discrimination, as specified. The bill would specify that the operative date of the verified complaint is the date that the intake form was filed with the Labor Commissioner.

### [AB 51](#)

#### **(Gonzalez D) Employment discrimination: enforcement.**

**Status:** 10/10/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 711, Statutes of 2019.

**Summary:** Would prohibit a person from requiring any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or other specific statutes governing employment as a condition of employment, continued employment, or the receipt of any employment-related benefit. The bill would also prohibit an employer from threatening, retaliating or discriminating against, or terminating any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of specific statutes governing employment.

### [AB 241](#)

#### **(Kamlager-Dove D) Implicit bias: continuing education: requirements.**

**Status:** 10/2/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 417, Statutes of 2019.

**Summary:** Would, by January 1, 2022, would require all continuing education courses for a physician and surgeon to contain curriculum that includes specified instruction in the understanding of implicit bias in medical treatment. The bill, by January 1, 2022, would require associations that accredit continuing education courses to develop standards to comply with these provisions.

### [AB 673](#)

#### **(Carrillo D) Failure to pay wages: penalties.**

**Status:** 10/10/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 716, Statutes of 2019.

**Summary:** Current law provides for a civil penalty, in addition to, and entirely independent and apart from other penalties, on every person who fails to pay the wages of each employee, as specified, including a provision prohibiting wage differential on the basis of sex, as provided in specified provisions of the Labor Code. Current law requires the Labor Commissioner to recover that penalty as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. Current law requires that a specified percentage of the penalty recovered under that provision be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws and that the remainder be paid into the State Treasury to the credit of the General Fund. This bill would also authorize the affected employee to bring an action to recover specified statutory penalties against the employer as part of a hearing held to recover unpaid wages.

### [AB 714](#)

#### **(Wood D) Opioid prescription drugs: prescribers.**

**Status:** 9/5/2019-Approved by the Governor. Chaptered - Chapter 231, Statutes

of 2019.

**Summary:** Current law requires a prescriber, as defined, to offer to a patient a prescription for naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid depression when certain conditions are present, including if the patient presents with an increased risk for overdose or a history of substance use disorder, and to provide education on overdose prevention to patients receiving a prescription and specified other persons. This bill would make those provisions applicable only to a patient receiving a prescription for an opioid or benzodiazepine medication, and would make the provisions specific to opioid-induced respiratory depression, opioid overdose, opioid use disorder, and opioid overdose prevention, as specified. The bill, among other exclusions, would exclude from the above-specified provisions requiring prescribers to offer a prescription and provide education prescribers when ordering medications to be administered to a patient in an inpatient or outpatient setting.

**[AB 744](#) (Aguiar-Curry D) Health care coverage: telehealth.**

**Status:** 10/13/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 867, Statutes of 2019.

**Summary:** Current law requires a Medi-Cal patient receiving teleophthalmology, teledermatology, or teledentistry by store and forward to be notified of the right to receive interactive communication with a distant specialist physician, optometrist, or dentist, and authorizes a patient to request that interactive communication. This bill would delete those interactive communication provisions, and would instead specify that face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for any health care services provided by store and forward.

**[AB 749](#) (Stone, Mark D) Settlement agreements: restraints in trade.**

**Status:** 10/12/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 808, Statutes of 2019.

**Summary:** Would prohibit an agreement to settle an employment dispute from containing a provision that prohibits, prevents, or otherwise restricts a settling party that is an aggrieved person, as defined, from working for the employer against which the aggrieved person has filed a claim or any parent company, subsidiary, division, affiliate, or contractor of the employer.

**[AB 1223](#) (Arambula D) Living organ donation.**

**Status:** 9/20/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 316, Statutes of 2019.

**Summary:** Would require a private or public employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, for the purpose of organ donation. The bill would require a public employee to first exhaust all available sick leave before taking that unpaid leave.

**[AB 1804](#) (Committee on Labor and Employment) Occupational injuries and illnesses: reporting.**

**Status:** 8/30/2019-Approved by the Governor. Chaptered by Secretary of State - Chapter 199, Statutes of 2019.

**Summary:** Current law requires an employer to immediately report a serious occupational injury, illness, or death to the Division of Occupational Safety and Health by telephone or email, as specified. This bill, instead, would require the report of serious occupational injury, illness, or death to the division to be made immediately by telephone or through an online mechanism established by the division for that purpose. The bill, until the division has made the online mechanism available, would require that the employer be permitted to make the report by telephone or email.

**[SB 83](#) (Committee on Budget and Fiscal Review) Employment.**

**Status:** 6/27/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 24, Statutes of 2019.

**Summary:** Current law, on and after January 1, 2010, requires that payments to employees made through the Uniform State Payroll System for master payroll paid on June 30 of each year be issue dated on July 1, provided that employees, in any event, be paid promptly. Current law requires that these payments be considered payables incurred in the fiscal year in which the payment is issue dated for purposes of the accounting system for the state by the Department of Finance, except as specified. This bill would repeal these provisions described above that require that payments to employees paid on June 30 of each year be issue dated July 1st, and would make conforming changes.

**[SB 142](#) (Wiener D) Employees: lactation accommodation.**

**Status:** 10/10/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 720, Statutes of 2019.

**Summary:** Would require an employer to provide a lactation room or location that includes prescribed features and would require an employer, among other things, to provide access to a sink and refrigerator in close proximity to the employee's workspace, as specified. The bill would deem denial of reasonable break time or adequate space to express milk a failure to provide a rest period in accordance with state law. The bill would prohibit an employer from discharging, or in any other manner discriminating or retaliating against, an employee for exercising or attempting to exercise

rights under these provisions and would establish remedies that include filing a complaint with the Labor Commissioner.

**SB 188** **(Mitchell D) Discrimination: hairstyles.**

**Status:** 7/3/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 58, Statutes of 2019.

**Summary:** The California Fair Employment and Housing Act prohibits housing discrimination based on specified personal characteristics, including race. The act also prohibits discrimination because of a perception that a person has one of those protected characteristics or is associated with a person who has, or is perceived to have, any of those characteristics. Current law defines terms such as race, religious beliefs, and sex, among others, for purposes of the act. This bill would provide that the definition of race for these purposes also include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles, and would define protective hairstyles for purposes of these provisions.

**SB 299** **(Jackson D) Personal information: minors: internet website: connected devices.**

**Status:** 5/3/2019-Failed Deadline pursuant to Rule 61(a)(3). (Last location was JUD. on 4/10/2019) (May be acted upon Jan 2020)

**Summary:** Would prohibit an operator of an internet website, online service, online application, or mobile application directed to minors, or an operator of an internet website, online service, online application, or mobile application that has actual knowledge that a minor is using its internet website, online service, online application, or mobile application, from using the personal information of a minor to direct content to the minor, or a group of individuals who are similar to the minor, based upon the minor's actual or perceived race, ethnicity, religion, physical or mental disability, medical condition, gender identity, gender expression, sexual orientation, sex, or socioeconomic background, or any other factor used as a proxy for identifying any of those characteristics.

**SB 583** **(Jackson D) Clinical trials.**

**Status:** 10/2/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 482, Statutes of 2019.

**Summary:** Would expand required coverage for clinical trials under a plan contract or insurance policy to include a clinical trial relating to the prevention, detection, or treatment of a life-threatening disease or condition, as defined, and include a clinical trial funded by, among others, a qualified nongovernmental research entity. The bill would prohibit a plan contract or insurance policy from, among other things, discriminating against an enrollee or insured for participating in an approved clinical trial. The bill would authorize a plan or insurer to require a qualified enrollee or insured to participate in a clinical trial, as specified, and to restrict coverage to an approved clinical trial in this state, unless the clinical trial is not offered or available through a participating provider in this state.

**SB 688** **(Monning D) Failure to pay wages: penalties.**

**Status:** 10/10/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 723, Statutes of 2019.

**Summary:** Would provide that if the Labor Commissioner determines that an employer has paid a wage less than the wage set by contract in excess of minimum wage, the Labor Commissioner may issue a citation to the employer to recover restitution of the amounts owed. This bill contains other related provisions and other existing laws.

**SB 707** **(Wieckowski D) Arbitration agreements: enforcement.**

**Status:** 10/13/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 870, Statutes of 2019.

**Summary:** Current law regulates arbitrations conducted pursuant to an agreement, as specified. In an employment or consumer arbitration in which the drafting party, as defined, is required to pay certain fees and costs before the arbitration can proceed, this bill would provide that if the fees or costs to initiate an arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration. If the drafting party materially breaches the arbitration agreement and is in default of the arbitration, the bill would authorize the employee or consumer to either withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction, or to compel arbitration in which the drafting party is required to pay reasonable attorney's fees and costs related to the arbitration. If the employee or consumer proceeds with an action in a court of appropriate jurisdiction, the bill would provide that the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration are tolled, as specified.

**SB 778** **(Committee on Labor, Public Employment and Retirement) Employers: sexual harassment training: requirements.**

**Status:** 8/30/2019-Approved by the Governor. Chaptered by Secretary of State. Chapter 215, Statutes of 2019.

**Summary:** Current law, by January 1, 2020, requires an employer with 5 or more employees to provide at least 2 hours of classroom or other effective interactive training and education regarding

sexual harassment to all supervisory employees and at least 1 hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California within 6 months of their assumption of a position. Current law also specifies that an employer who has provided this training to an employee after January 1, 2019, is not required to provide sexual harassment training and education by the January 1, 2020, deadline. This bill would require an employer with 5 or more employees to provide the above-described training and education by January 1, 2021, and thereafter once every 2 years.

**Total Measures: 18**