

- Hey, and welcome to PCTY Talks. I'm your host, Shari Simpson. During our time together, we'll stay close to the news and info you need to succeed as an HR pro. And together, we'll explore topics around HR thought leadership, compliance, and real life HR situations we face every day. Joining me today on the podcast is Kim Gusman. She is the president and CEO at California Employers Association. So glad, Kim, that you are able to jump on with me today.

- Thank you Shari, we are really happy to be here.

- So I thought we could spend some time today talking about some pieces of California workplace legislation that's been signed into effect. In fact, we're gonna try to tackle 10 of them. 'Cause I think it's so important as we go into the new year to have a good sense of what's out there. And we all know that California is one of those states that typically if it happens there, we're gonna see it across the country at some point. So it's really good to have a good understanding with that. So Kim, I thought maybe we could start with FAST Act. Tell me a little bit more about that.

- So they called it the FAST Act, and I'm glad they did, because the real long terminology is the Fast Food Accountability and Standards Recovery Act, and who wants to try and remember that? So the FAST Act, which is Assembly Bill 257, was actually signed by the governor back on Labor Day. And it's really aimed at the fast food industry, specifically restaurants that are part of a chain of 100 or more establishments. But it really does include other types of businesses beyond what people would consider fast food. And what's so unprecedented about this is that, for the first time ever, the basics of the bill establish a 10 member fast food sector council. And this 10 member unelected body is gonna really regulate and establish standards on wages, working hours and other working conditions that are gonna be applicable to the entire fast food industry. And so unless lawmakers step in to prevent these new established rules from, you know, coming before the legislature, they're going to automatically go into effect. And some of the key things that really a lot of employers are concerned about would be something like wage raises. For example, this Fast Food Council, or the FFC, is going to be allowed to set minimum wages, and minimum standards on wages, and they're allowed to cap those at \$22 an hour in 2023, which would be huge. So that's a big part of the concern.

- It's interesting that they're looking at adding another governing body, 'cause we all know OSHA already exists, right, governing some of that stuff in the food safety industry. So that's really interesting that they've gone this direction. You know, there's another law out there that I'd love to talk about is the card check for agricultural employees.

- Yes, this one is another big one. I think that's what we're seeing

this year is, you know, it was kind of quiet, it was all about COVID over the last couple years. And so now things have really come back, and every industry is being touched. So what I found interesting about this AB 2183, which is the card check for agriculture employees, is that on the one hand, you think, well, it only impacts farmers. However, you know, upon further investigation, some people may not realize that California's ag industry is the state's largest economic driver. It produces about 50 billion in revenue annually. And even more interesting is that California provides more than a third of the country's vegetables and more than two third of the entire country's fruits and nuts. So it's huge, you know, and it's a lot of workers being impacted. But let me tell you really kind of what it does, it's really aimed at making it easier for farm workers to unionize in the state of California. And it's really a very big victory for labor unions. So employers will now have two options starting in 2023. They can either agree to a labor piece agreement with their employees, which means their employees will be able to vote by mail-in ballots. And in addition to that, what is really unusual is that employers will not be allowed to make statements for or against the union to their employees, and they will not be allowed to have captive audience meetings, which can happen right now with their employees. So that's one option. The other option is they can just say, hey, we're gonna submit authorization cards, and if a majority of our employees sign them, they're automatically certified without an election. So either way, this is very, very big news. Again, labor unions are celebrating, and many employers are concerned.

- It's really interesting, especially that last option about, you know, automatically distributing those authorization cards. So a lot to consider if you're in the California agriculture space to really have your mind wrapped around as to what you're gonna do with that. You know, one of the big things that we've talked about over the last year, and it was interesting seeing legislation come out of Colorado this week in the legalization of mushrooms. California is doing some interesting thing around cannabis in the workplace. So I'd love to hear a little bit more about that.

- Yes, yes, and this is one of the times where Colorado is the leader instead of California on a lot of stuff, when it comes to cannabis in the state, but also cannabis in the workplace. Now, one thing to note before we jump into this one, which is AB 2188, is that this cannabis in the workplace AB 2188 bill does not become effective until January 1st, 2024. Which means we've got time. Employers have some time to think about this, and to implement it, an entire year in fact. So, but this is now allowing for employment discrimination protections, pardon me, regarding the lawful use of cannabis in the workplace. So what the bill basically states is that employers cannot discriminate against a current employee or an applicant for using cannabis while they're off the job and away from the workplace. Employers will be able to test for THC, which is the chemical compound in cannabis that causes

impairment, and that is usually detected in the body within the last few hours. But not for cannabis metabolites, which are stored in the body after THC as metabolized. So while the bill specifies that it doesn't permit an employee to show up impaired by cannabis on the job, or to possess any cannabis while they're on the job, it's still going to be a challenge for employers, because it really is not a general widespread easy test for determining cannabis impairment. I mean we all joke about, well, your eyes are red, or you know, you're saying hey dude a lot, or whatever it might be, but we've gotta come up within the next year some better ways to test for cannabis impairment. And there are a couple of exemptions, Shari, so for example, AB 2188 will not apply to any employees in the building and construction trades, which is a pretty big industry, and this new law will not preempt requirements for federal contracts, and it's not going to interfere with specified employer rights and our right as an employer to maintain a drug and alcohol-free workplace. But it's gonna be a sticky wicket and I'm glad we've got a year to talk about it and a year to think about how to implement this in each of our workplaces.

- For sure, if the employer rights to maintain that drug and alcohol free workplace are still built in, it's definitely something to navigate. And I appreciate you talking about there really isn't that general widespread test to be able to tell, you know, in the moment is somebody impaired. So it'll be interesting to see how the medical industry and testing industry changes or evolves in the next year before this goes into effect, so that's really interesting. You know, the next one I want talk about is pay transparency, I feel like this is something we talk about a lot across the board.

- Well, that's true, that's true. And maybe we keep talking about it, 'cause there's still a lot of work to be done. And California really continues to push this envelope, you know, they have, California as a state has done a lot to address pay inequities, several years ago, we enacted legislation to require employers with 100 or more employees to file pay data reports. And now SB 1162, we are calling this the paid transparency bill, really expands that law in a number of ways. So I'll break it down a little bit by size of employer, 'cause I think that's obviously very important. So many of the listeners are at just very different employee headcounts. So for private employers, this is private, not public sector, private employers with 100 or more employees must file pay data reports regardless of whether they are required to file a federal EE01 with the Equal Employment Opportunity Council. But what this does it is spans the information required to be included in those pay data reports, so that now you have to include median and mean hourly rates within each job category by race, by ethnicity, and by sex. And it requires employers who have 100 or more employees that are hired through labor contractors to file a separate pay data report covering those employees. So, wow, you know, if you don't know a lot about compensation work, you're probably gonna want to get some help as an employer on how to do this, 'cause it's an

awful lot of work. Smaller employers, you know, have been able, those under 100 employees, pardon me, have been able to say, hey, you know, I don't have to worry about this. But for 2023, there's a big shock for smaller employers, because those employers who have 15 or more employees will now need to include pay scale information on every single job posting they put out there. So doesn't matter what platform you're using, from the old fashioned Craigslist to some of the newer software platforms that are out there recruiting and all that. Or if you use a recruiting agency, you've got to have a pay scale, whether it's hourly or salary. And again, fabulous news for those job seekers. But employers who haven't done this in the past are kind of nervous about that and having to actually create those pay scales and think about it. And then finally, another part of this law that really impacts every single employer, it doesn't matter what size you are, you now have to provide a pay scale, like we just talked about, to any current employee who's working for you if they request it. So your employee comes to you and says, hey, I know that I'm making X dollars per hour or X dollars annually with my salary, and I wanna know how high can I go, what's my pay range, what's my pay scale? And a lot of employers are thinking, I don't know, we didn't have one. So now it's going to be time to create that. And again, this is effective January 1st, 2023.

- I do think we're gonna see a lot of new job postings now that have the caveat of, you know, California pay range, Colorado pay range. You know, there's another piece of legislation coming out that I find really interesting, and it goes along with how we've seen changes around leave across the country, sick leave and different types of that time. This one has to do with bereavement leave.

- Yes, this is an interesting one. This is AB 1949, and I love your comments about that, Shari, because I do believe that the whole world has seen throughout the pandemic more humanity in the workplace, more about being present, being where you need to be, more about the work-life balance and how there kind of isn't a balance, they just blend anymore, now that we have so much remote work going on in the country. And so I do think this is not a surprising bill. And it's really been put before a couple times, but I think it passed quite easily this time because of, again, just collective trauma that the world has faced throughout the pandemic. So Assembly Bill 1949 applies to employers with five or more employees. And what it does is it allows employees to take up to five days off of bereavement leave upon the death of a family member. And when you wonder, well what is a family member, quote unquote, you would go under the California Family Rights Act, and that lists all the definitions of who is or is not a family member. Now this really isn't getting much opposition, mainly because it's unpaid leave. So really employers are not being asked to do anything more than grant somebody five days off. And again, let's have a little humanity in the workplace. I don't think that's a big ask. While it is unpaid, an employee can certainly use their other paid

time off, maybe their vacation pay, maybe your company has personal leave or sick leave, or maybe they have compensatory time off, if they're in the public sector. And the few caveats around this are that the bereavement leave has to be used within three months of the death of a family member. However, it does not have to be used all at once. So those five days can be used intermittently. Maybe there's two days off just because of shock and grief, and we've gotta get some business handled, and then maybe later on there's going to be a family memorial and so they need to take some additional time off. And the other caveat is it's only available to employees who have worked for the employer for at least 30 days before they ask for the time off. And you know, so again, I don't think a big hardship to employers, a very nice thing to do for employees. Employers are really gonna want to take a look at their handbook policies, not only with some of the other ones we've talked about, but especially with this one. The good news is, you know, employers are allowed, and we certainly would encourage them at CEA to request appropriate documentation. Let's make sure there truly was a death in the family. And of course if you do that for one employee, you need to do that consistently, and ask every employee that that says, hey, we've had a death in the family, I need documentation. So you either ask everybody or nobody for that documentation.

- You know what's interesting, there's other benefits and legislation coming around I feel like every time we turn the corner. You know, there's another one that came out in California, you know, the family leave to care for designated persons. Maybe you could elaborate a little bit more on that one.

- California's family and medical leave law has really seen dramatic expansion over the last several years, as we talked about. And you're right, so often it was always those big employers with 50 or more, but in recent years, the California Family Rights Act had already extended to cover smaller employers, and to expand the definition of covered family members, and you know, included adult children, which was very new, siblings, grandparents, parents-in-law, grandchildren, you know, just the list continues. Well now that CFRA, or California Family Rights Act, will be extended with this Assembly Bill 1041, and it now will say that an employee can take job-protected leave to care for a designated person. And the bill defines a designated person as any individual related by blood whose association with the employee is the equivalent of a family relationship. So they can be designated by, a designated person to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. And that would not be a blood relative. And unfortunately, which so often happens with these new bills, the legislation does not really clearly define any further than what I just said what this means. So employers are gonna be kind of scratching their heads, going are you the equivalent of a family relationship? The other little thing that's kind of new and it will

have to be sorted out, as often happens, again, with these new bills is that an employee can identify that designated person in advance, but then they may want to change their mind later on. And employers will have the ability to say you only get to designate one person per 12 month period. So what if somebody changes their mind during that period, and that person's no longer an important person in their life or not there? So there's still a lot of stuff to be figured out on this particular bill more than any others I've seen that have passed.

- There definitely is a move towards giving employees more say in how they use their benefits, but there's complexities to it, like you just mentioned, you know, without the details in the legislation on how we're supposed to do that, right. Us as HR professionals are left to figure that out. So definitely gonna be a challenge for sure. The next one I wanna talk about, it's the emergency conditions legislation. I'd love to hear more about that one.

- Yes, and you're right, you know, I think all of us in California have been so concerned about wildfire over the last few years, it's been devastating to the wildlife, to our land, to employers, to employees. It's just, the economy, everyone's been impacted. So this one, this is a Senate Bill, as opposed to an Assembly Bill, Senate Bill 1044 is really all about emergency conditions. And it was brought about in response to concerns over reports of employees who are being required to work in unsafe wildfire conditions. And so this senate bill prohibits an employer, anytime there is a quote unquote emergency condition, from taking any adverse action against an employee for refusing to report to work or for leaving a workplace or a work site anytime that employee has a reasonable belief that the workplace or the work site might be unsafe. Now, emergency condition is going to be defined as conditions of disaster or peril caused by natural forces, of a criminal act, or an order to evacuate, whether that's evacuating a workplace, a work site your home, or maybe even the school of a worker's child. And the big thing that I think employers got nervous about here that I want to point out is the emergency condition does not include COVID, it does not include a pandemic. So SB 1044 will not be applicable to employees who claim the work safe, the work site, pardon me, is unsafe because there's COVID here. This is really not about that. This is really about wildfire conditions and other emergency situations and actual you know, natural disasters.

- I think that's a really good call out. Just the difference between what's gonna be included in this and in other types of legislation. You know, our last three pieces of legislation that I want to cover are all around COVID. So maybe you can just cover those three next.

- Sure thing, you know, you gotta end with COVID. We thought it was gone, it is not gone. We all know that. And so we have to laugh about it, right? Otherwise we might just, we might just cry about it and crawl on a hole. So yes, let's end our, our top 10 list with three

final COVID bills, since it is still with us. So Governor Newsome extended the California COVID-19 Supplemental Paid Sick Leave Act. And he's extended it through the end of this year. So the law does not provide a new allotment of leave, but it does extend the time employees have to use any remaining leave. So, as a reminder, employees were given 80 hours to use for COVID supplemental paid sick leave. And again, back in September 20, September 29th this was supposed to stop and sunset, but the governor went ahead and signed what we call a budget trailer bill, which meant it went into effect immediately. And again, it continued the SPSL, the supplemental paid sick leave through December 31st of 2022. The other thing is employers may want to take a peek and look at some SPSL relief grant programs that were also brought about by this, where employers can get some reimbursement financially to help pay for the fact that they had to pay their employees for this this leave. Another one, the other two I should say, are Assembly Bill 2693 and Assembly Bill 1751. Both of these really extend COVID-19 legislation that was set to expire at the end of the year. And it now is going to extend it into all of next year and until January 1st of 2024. So the first one I want to talk about is kind of a two part, part one of 2693 says that the statutory notice requirements that employers have to provide, you know, when we have to tell your employees, hey, somebody else in the workplace that you might have been around has been exposed to COVID-19 in the workplace, that's gonna have to continue for the rest of this year and all of next year. It also requires employers, in lieu of giving individual notices, they might, they can now just simply post a notice in the workplace for 15 days when there has been a COVID-19 exposure. That's certainly a lot easier. But again, the employer can also have the alternative of providing individual notices as they've always been doing. So if you're comfortable with the the program you're already on, continue it. Especially if your people are remote or whatnot. You know, that notice in the workplace may not work. It just depends what kind of an industry you're in. And then the final and second part two of that COVID law is Assembly Bill 1751, which just extends a previous rebuttal presumption. Again, we've already been living with this law, but it's just gonna carry it all the way through throughout 2023, which says for workers' comp purposes for COVID-19, there is a rebuttal presumption that certain COVID-19 cases are work related under outbreak circumstances. So if there's an outbreak at work of COVID, and somebody says, well, I got COVID, I'm not sure where we got it, there's going to be an assumption or a presumption that you know what, it happened at work, and people need to continue to notify the worker's comp administrator and make sure you are reporting those claims to workers' compensation. They can determine whether the person is entitled to any worker's comp benefits.

- Wow, there is so much going on in California we have to pay attention to. And we just covered the top 10. So in our show notes, I will definitely link out to all of the legislation we talked about, If you want to read more in depthly and decipher it yourself, or you

could always reach out to California Employers Association, look at joining them as a member, because I think you have a lot of really great resources for those listening that are located in California. So Kim, thanks for taking a few minutes of your day to go through all of this really important legislation we need to pay attention to.

- You are so welcome, Shari, thank you, thanks a lot for asking us to be here today.

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