



# RISK REPORT

## Top 10 California Laws, Regs for 2023

**A**SLEW OF new laws and regulations that will affect California businesses are taking effect for 2023.

Last year was a busy one, with ground-breaking new laws on employee pay disclosures, a law prohibiting discrimination against cannabis-using employees and another expanding the circumstances when employees can take leave to care for a loved one.

The following are the top 10 laws and regulations that employers in the Golden State need to stay on top of.

### 1. Pay disclosure

This sweeping law in part requires more disclosure of pay information by employers. Under current law, employers are required to provide the pay scale for a position upon reasonable request by a job applicant. SB 1162 goes a step further by:

- Requiring employers, upon request by a current employee, to provide the pay scale of the position they are employed in.
- Requiring employers with 15 or more workers to include pay scale in any job postings for open positions.
- Requiring employers to maintain records of job titles and wage rate history for each employee while employed for the company, as well as three years after their employment ceases.

Note: The law defines “pay scale” as the salary or hourly wage range that the employer “reasonably expects” to pay for the position.

Penalties range from \$100 to \$10,000 per violation. This law took effect Jan. 1, 2023.

### 2. State of emergency and staff

This new law, SB 1044, bars an employer, in the event of a state of emergency or emergency condition, from taking or threatening adverse action against workers who refuse to report to, or leave, a workplace because they feel unsafe.

“Emergency condition” is defined as:

- Conditions of disaster or extreme peril to the safety of persons or property caused by natural forces or a criminal act.
- An order to evacuate a workplace, worksite or worker’s home, or the school of a worker’s child due to a natural disaster or a criminal act.

SB 1044 also bars employers from preventing employees from using their mobile phones to seek emergency assistance, assess the safety of the situation or communicate with another person to confirm their safety.

The law, which took effect Jan. 1, 2023, does not cover first responders and health care workers.

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# Law Bars ‘Discrimination’ Against Cannabis-Using Employees

## 3. Cannabis use and discrimination

This law bars employers from discriminating in hiring, termination or other conditions of employment based on employees using cannabis while off duty.

The bill’s author says the legislation is necessary because THC (tetrahydrocannabinol), the active ingredient in marijuana, can stay in a person’s system after they are no longer impaired. As a result, drug testing may detect THC in an employee’s system even if they used it weeks earlier and it is having no effect on their job performance.

AB 2188 does not require employers to permit employees to be high while working.

The bill would exempt construction trade employees and would not preempt state or federal laws that require employees to submit to drug testing. This law takes effect Jan. 1, 2024.

## 4. Leaves of absence

The California Family Rights Act and the state’s paid sick leave law allow employees to take leave to care for a family member, defined as a spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild or sibling.

The definition has been expanded to include “any individual related by blood or whose association with the employee is equivalent of a family relationship.”

## 5. Contractor workers’ comp

Starting July 1, the following contractors must carry workers’ compensation coverage regardless of if they have employees or not:

- Concrete (C-8 license),
- Heating and air conditioning (C-20),
- Asbestos abatement (C-22), and
- Tree service (D-49).

Starting Jan. 1, 2026, all licensed contractors must have coverage.

## 6. OSHA citation postings

Under current law, employers that receive citations and orders from OSHA are required to post them in or near the place the violation occurred, in order to warn employees about a potential hazard.

Starting Jan. 1, 2023, they must post the notice not only in English, but also: Spanish, Chinese (Cantonese, Mandarin), Vietnamese, Tagalog, Korean, Armenian and Punjabi.

## 7. Permanent COVID standard

Cal/OSHA has a permanent COVID-19 prevention standard that will sunset in 2024. The new standard, which replaces the temporary emergency standard the agency had implemented, should provide more certainty for prevention procedures and practices.

Here are the main takeaways:

- Employers are no longer required to pay employees while they are excluded from work due to COVID-19, or to screen employees daily.
- Employers must still notify and provide paid testing to employees who had a close contact in the workplace.
- Employers can now incorporate written COVID-19 procedures into their Injury and Illness Prevention Programs.

## 8. CalSavers expanded

SB 1126 requires any person or entity with at least one employee to either provide them with access to a retirement program like a 401(k) plan or enroll them in the state-run CalSavers program.

Prior to this new law only companies with five or more employees that do not offer a retirement plan are required to enroll their workers in CalSavers.

## 9. Bereavement leave

Employers with five or more workers are required to provide up to five days of bereavement leave upon the death of a family member, under a new law starting in 2023.

This leave may be unpaid, but the law allows workers to use existing paid leave available to them, such as accrued vacation days, paid time off or sick leave. Employers are authorized to require documentation to support the request for leave.

## 10. PFL wage replacement

This law was passed last year, but does not take effect until 2025. Existing California law allows employees to apply for Paid Family Leave and State Disability Insurance, both of which provide partial wage replacement benefits when employees take time off work for various reasons under the California Family Rights Act.

Starting in 2025, low-wage earners (those who earn up to 70% of the state average quarterly wage) will be eligible for a higher percentage of their regular wages under the state’s PFL and SDI benefit programs.



## Construction Prep

# Preparing for Surety Bond Underwriter Queries



**I**F YOU'VE been involved in a large construction project, you are familiar with surety bonds and all of the underwriter's questions you need to answer. If you're new to the game, it can be daunting.

Many small contractors pass on bidding for projects if they require a surety bond. But it doesn't have to be that way as long as you are prepared and know what kind of questions the surety insurer's underwriter will be asking.

Surety bonds protect project owners from loss if the contractor's work is defective or of poor quality, or if the contractor fails to complete the work or follow the terms and conditions in the agreement.

For example, if the contractor fails to finish a project due to a shortage of workers or financial problems, the surety company has to step in and perform in the contractor's place. Obviously, it's in the carrier's best interest to insure projects where they won't be asked to perform. As a result, the questioning can feel like an inquisition, but it's worth it to be prepared so that the insurer underwrites the bond and you can get to work.

## TYPICAL QUESTIONS

- Have you, the principal, ever worked with this owner, or general contractor (if you're a subcontractor)? What was that project and was it successfully completed?
- Can we confirm financing on any private project? This question aligns with Section 2.21 on the American Institute of Architects Document A201.
- What is the project scope? Have you worked on a similar project before, and what was the outcome of that project?
- Geographically, are there any constraints that could impact your ability to complete the project? For example, if you're working in a state with proprietary workers' compensation laws, can you obtain the necessary insurance coverage to comply with that state's statutory workers' compensation requirements?
- What is the warranty period? Is it a typical time period or longer than usual?
- Name any material manufacturers involved in the warranties, and do the contract terms allow the contractor to tender claims to them?

## Other areas of scrutiny

Besides the questions in the box, the insurer will also likely want to know:

- If the start and completion dates in the contract are feasible.
- The amount of the bid bond if there is one.
- Any warranty terms and if they are sensible.
- The payment terms and if they will allow the owner to manage expenses during the life of the project.
- If there is any retainage, or the withholding of the final contract payment for a specific time period to ensure that the job has been properly completed.
- If there are any damages that are set out in the contract in case of non-performance or shoddy workmanship.
- If the contractor's costs to complete other projects it is working on are sufficient to ensure that it can cover its general and administrative costs in the following year.

The above list is not exhaustive and some surety insurers may have different areas of interest.

The bottom line is you'll want to make sure your finances are up to snuff and that you have a strong track record.

## Ransomware Fallout

# Firms That Pay Ransom Often Hit Again

**A** NEW REPORT found that one-third of companies who are hit with ransomware and pay the hackers to unlock their systems, are often likely to be targeted a second time.

And after they pay, they are often faced with significant consequences, including system rebuilding costs, their data still being leaked and financial consequences, according to the “2022 Cyber Readiness Report” by Hiscox. The eye-opening results of the study come as the number of businesses hit by cyber attacks continues growing.

Considering the potential damage to your organization if your systems are compromised in the aftermath of a ransomware attack, even if you have cyber insurance to pay recovery costs, it's best to take steps to thwart attacks in the first place.

### More than ransom

It's clear that paying a ransom often doesn't mean the recovery for an affected business will be smooth, according to the report, which covers the poll results of 5,000 organizations.

### PAID RANSOM; PROBLEMS PERSIST

- 36% of organizations that paid the ransom were hit again within 12 months.
- 41% of companies that paid the ransom and received the recovery key ended up with incomplete databases and were still forced to rebuild their systems.
- 29% of firms that paid the ransom demand still had data leaked.
- 26% of businesses paid a ransom in the hope of recovering their data because they did not have any back-ups.
- 26% of businesses hit by ransomware said the attack had threatened the solvency and viability of their operation.

### The risk

Nearly half (47%) of firms reported that they had been hit by a cyber attack during the past 12 months, up from 40% in 2021. Of those who were attacked, 17% were ransomware victims.

The median cost of an attack has risen 29% to just under \$17,000.

Small firms can no longer expect to fly under the radar as the criminals increasingly have them in their sights.

### What you can do

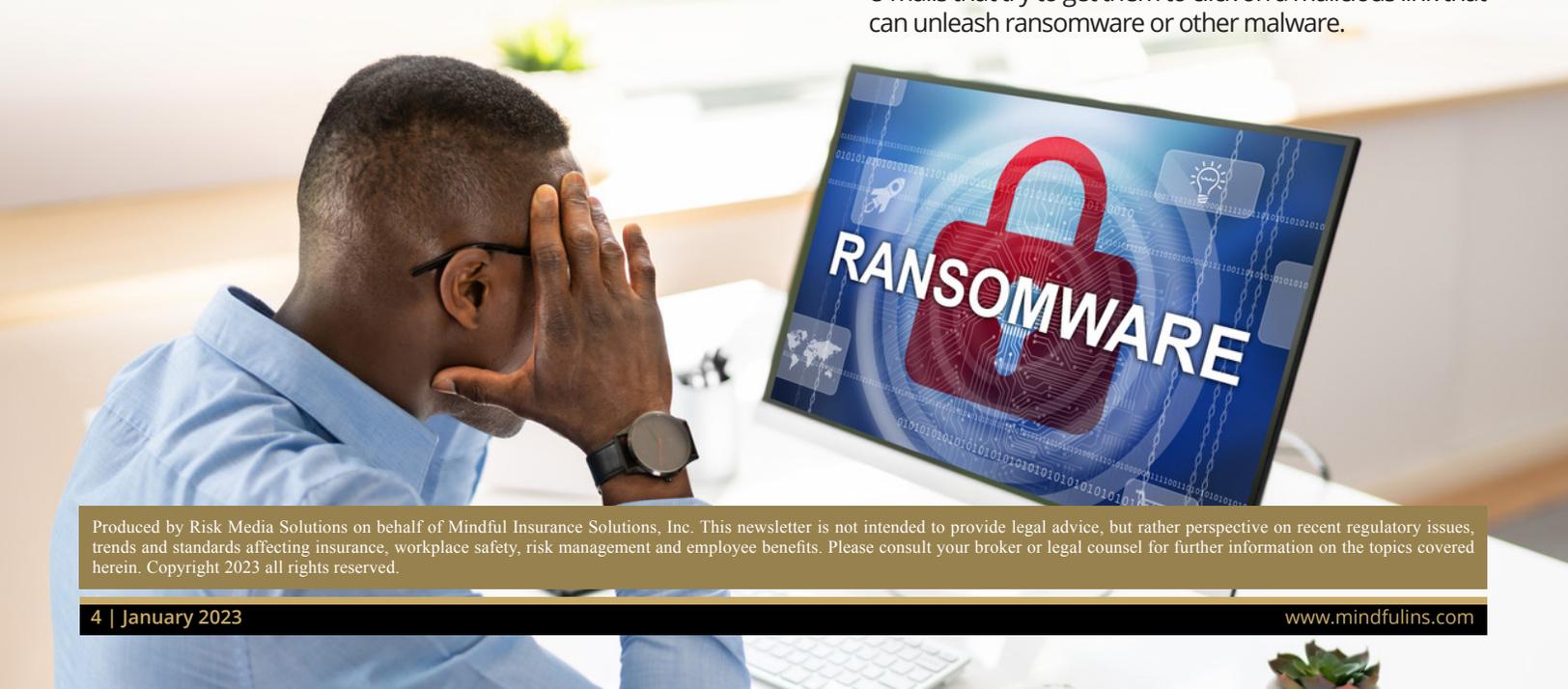
Some firms have little exposure to a cyber attack, particularly if they don't handle customer data or are not tech-driven operations. Each firm has a different exposure level.

For companies that have cyber exposure, protecting their organization requires a multi-pronged approach that includes cyber insurance and strong data security protocols.

Cyber insurance may cover the cost of a paid ransom as well as recovery and rebuilding costs. If your organization has exposure, please give us a call to review your risk and see if cyber insurance is right for your business.

Besides that, Hiscox recommends taking a number of steps to protect against an attack and be able to recover from one faster:

- Keep all of your software up to date to include the installation of all the latest security patches.
- Frequently back up your data on a server that is not hooked up to the cloud.
- Train workers on how to recognize and avoid common social engineering attacks that criminals use to trick them into revealing sensitive information about themselves or their company.
- Teach your staff how to detect potentially dangerous e-mails that try to get them to click on a malicious link that can unleash ransomware or other malware.



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