



# New Years, New Laws

January 2022 Newsletter

## In the news!

Karen Carrera and Workplace Solutions in the news. Interviewed by Telemundo, Channel 48 regarding Covid-19 vaccination requirements in the workplace and new employment laws in 2022:



**Employers Can Require Their Employees To Get Boosters Shots.**

<https://www.telemundoareadelabaha.com/noticias/local/empleados-podrian-ser-forzados-a-ponerse-la-vacuna-covid-19-de-refuerzo/2197391/?amp>

**New Employment Laws in 2022**

<https://www.telemundoareadelabaha.com/videos/videos-noticias/cuales-son-tus-derechos-laborales-en-california/2200952/>

**Reminder: California law requires harassment prevention training of employees and managers every two years and within 6 months of hire for new employees. Our team will make it easy and painless for you to comply with the law. Trainings in Spanish for Spanish speaking workers are our specialty. Call us at 415-989-8000 or visit our website at [www.vcworkplacesolutions.com](http://www.vcworkplacesolutions.com) for more information.**

## Silenced No More!

Go ahead. Talk about it.

In response to the “Me too” movement, in 2018, Senate Bill 331 was proposed to prevent settlement agreements from disclosing unlawful acts of harassment, discrimination, or retaliation in the workplace in severance agreements. Beginning in 2022, settlement agreements that make acts of harassment confidential are unenforceable and against



**In addition, if a settlement agreement contains a non-disparagement clause, the agreement must also include the following words or words substantially similar to the following:**

*"Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."*

The law prevents an employer from requiring victims of sexual assault or sexual harassment to agree to confidentiality regarding the underlying facts of their claims. Settlement agreements may, however, keep the amount of the payment confidential but cannot impose non-disclosure obligations on the employee about the underlying facts related to a discrimination, harassment, or retaliation claim (on any protected basis, such as race, age, or disability, not just sex).

This law prevents "hush money" type payments that are often touted in the press, and that arguably allow serial harassers (and other bad actors (and former presidents)) to continue their malfeasance.

An employee must be given at least *five business days* to review any severance agreement and advised of the right to consult an attorney.

Confidentiality Agreements and Non-Disclosure Agreements Also May Be Impacted

SB 331 also addresses non-disparagement agreements and "other documents" required of employees beyond settlement or separation agreements. In fact, any agreement that has the purpose or effect of prohibiting the disclosure of information about unlawful acts in the workplace must now include the same quoted language referenced above. Employers with broad Confidentiality or NDA agreements should take note and amend these documents for 2022.

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**This is from the US Centers  
for Disease Control and  
Prevention.**

**Healthy Ways to Cope with  
Stress:**

- Take breaks from watching, reading, or listening to news stories, including those on social media. It is good to be informed but hearing about the pandemic constantly can be upsetting. Consider limiting news to just a couple times a day and disconnecting from phone, TV, and computer screens for a while.
- Take care of your body:
  - Take deep breaths, stretch, or meditate
  - Try to eat healthy, well-balanced meals



- Exercise regularly
- Get plenty of sleep
- Avoid excessive alcohol, tobacco, and substance use
- Continue with routine preventive measures (such as vaccinations, cancer screenings, etc.) as recommended by your healthcare provider; and,
- Get vaccinated with a COVID-19 vaccine.
- Make time to unwind — Try to do some other activities you enjoy.
- Connect with others — Talk with people you trust about your concerns and how you are feeling.
- Connect with your community- or faith-based organizations — While social distancing measures are in place, try connecting online, through social media, or by phone or mail.

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## Karen Carrera holds a certificate from AWI-CH to conduct workplace investigations.

## Karen Carrera serves on the DEI Task Force for the Town of Tiburon, California.

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### New Employment Laws for 2022

#### 1. **Minimum Wage Increases -**

Effective Jan. 1, 2022, the California state minimum wage will increase to \$15 per hour for employers with 26 or more employees, and it will increase to \$14 per hour for employers with 25 or fewer employees. Some local cities and counties will have **higher** minimum wage requirements or will have minimum wage requirements that do not distinguish based on employer size. At present, California has more than 35 cities and counties with their own minimum wage requirements including, but not limited to, Los Angeles, Menlo Park, Oakland, San Francisco and South San Francisco, San Jose, San Diego and Santa Clara.



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#### 2. **AB 286 - Food delivery and facility personnel will keep all of their tips.**

The new law makes it unlawful for a food delivery platform to retain any portion of amounts designated as a tip or gratuity. Instead, food delivery platforms must pay any tip or gratuity for a delivery order to the person delivering the food or beverage. Any tip or gratuity for a pickup order must be paid in its entirety to the food facility.

#### 3. **AB 701—Warehouse Distribution Centers Must Disclose Quotas to Nonexempt Employees -**

AB 701 enacts Labor Code Sections 2100-2112, which regulate and set parameters around the use of production quotas at warehouse distribution centers in California. AB 701 expressly prohibits any quota that prevents an employee from (1) meal or rest break compliance, (2) use of bathroom facilities or travel to and from the bathroom, or (3) compliance with California "occupational health

and safety laws” as set forth in the Labor Code. AB 701 also requires covered employers to provide detailed written documentation of any applicable quota to each employee either upon hire or within 30 days of the effective date of the new law and prohibits a covered employer from taking adverse employment action against an employee for failure to meet any quota that was not properly disclosed to the employee or which otherwise fails to meet its new provisions.

4. **SB 331—Further Limits to Nondisclosure Agreements and Settlement Agreements.** In 2019, California enacted Code of Civil Procedure Section 1001 to prohibit any settlement agreements from preventing the disclosure of factual information related to a claim in a civil or administrative action involving an act of sexual assault, sexual or other sex-based workplace harassment or discrimination, or retaliation for reporting the same. SB 331 expands Section 1001 to now prohibit settlement agreement provisions that restrict or prevent the disclosure of factual information related to a civil or administrative claim involving *all* forms of workplace harassment, discrimination and retaliation based on any protected class, not just those that are sex-based.
5. **SB 331 also amends Government Code Section 12964.5** to require that an employment non-disparagement provision in any type of employment agreement that purports to restrict an employee’s ability to disclose information regarding workplace conditions include the following verbiage or something substantially similar: “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have any reason to believe is unlawful.” Section 12964.5 is also amended to require an employer who is offering an employee a separation agreement to notify the employee that he or she has a right to consult an attorney regarding the agreement, and to provide the employee with a “reasonable time period” to consider the agreement of not less than five business days, although an employee may voluntarily sign the agreement earlier. The changes enacted under SB 331 are not retroactive but will apply to agreements entered into on or after Jan. 1, 2022.
6. **SB 762—Arbitration Invoicing Requirements.** Civil Code Sections 1281.97 and 1281.98, enacted on Jan. 1, 2020, impose stiff penalties and sanctions on employers for failing to timely pay arbitration fees. SB 762 amends those two Civil Code sections to require arbitration providers to provide an invoice for all arbitration fees and costs required before an arbitration can proceed to all parties, on the same day and by the same means.
7. **SB 646—PAGA Exemption for Certain Unionized Janitorial Employees.** SB 646 enacts Labor Code Section 2699.8, which exempts and otherwise precludes certain janitorial employees covered by a collective bargaining agreement (CBA) that meets specific criteria, from filing a lawsuit under the Labor Code Private Attorneys General Act (PAGA). The new statute provides that union-represented janitorial employees may not bring a PAGA action if they are covered by a CBA that “provides for the wages, hours of work, and working conditions of employees, provides premium wage rates for all overtime hours worked” and meets other specific conditions.
8. **SB 807—Personnel Records Retention and Procedural Changes to DFEH Enforcement.** SB 807 extends the two-year personnel record

retention requirement in Government Code Section 12946 to four years from the date the records were created, or the date the employment action was taken. If an employer is notified that a complaint was filed with the Department of Fair Employment and Housing (DFEH), then related personnel records must be retained until the employer is notified that the action has been fully resolved, or the first date after the period for filing a civil action has expired.

9. **AB 1033—Expanded Definition of Family Member Under CFRA and Small Business Mediation Provisions** - AB 1033 adds “parents-in-law” to the list of included family members for whom an eligible employee can take protected leave under the California Family Rights Act (CFRA). AB 1033 also modifies the procedures surrounding requirements for employees of small businesses (i.e., those with five to 19 employees) to mediate family leave disputes prior to filing suit.
10. **SB 657—Emailing of Required Notices and Workplace Postings** - SB 657 enacts Section 1207 of the Labor Code and provides that, where employers are obligated to physically post and/or display mandatory postings in the workplace, the employers may also convey that information to employees by email with the document(s) attached. The email distribution, however, does not alter an employer’s obligation to physically comply with posting requirements.
11. **AB 1003—Intentional Wage Theft Will Be Criminally Punishable** - AB 1003 adds Section 487m of the California Penal Code to provide that the intentional theft of wages and/or gratuities in excess of \$950 for one employee or \$2,350 for two or more employees in a 12-month period is now punishable as grand theft, which can result in either misdemeanor or felony charges. This bill also defines employees to include independent contractors and provides for the recovery of wages and/or gratuities as restitution under its provisions.
12. **SB 93 -Applies to qualified, laid off employees at covered enterprises in the hospitality industry.** When a new position is established, it must first be offered to employees who were laid off who are “qualified” for the position. The term “qualified” means that the employee held the same or similar position at the time of the employee’s most recent layoff with the employer. The layoff must have been related to or caused by the pandemic. Back pay and penalties are available. There is no private right of action. Only the DLSE can enforce this law. This law does not preempt city or county ordinances that provide greater rights. Localities with their own ordinances include San Francisco, Oakland, Santa Clara and Los Angeles.
13. **SB 62 – Garment Worker Protection Act.** SB 62 is intended to result in fair wages and improved working conditions for garment workers. Among other things, the Act (1) prohibits piecework pay, (2) creates joint and several liability for unpaid wages for “brand guarantors,” along with manufacturers and contractors, and (3) creates new recordkeeping requirements for manufacturers and brand guarantors. The Act builds upon Assembly Bill 633, a worker protection law enacted in 1999, which aimed to prevent wage theft in California’s garment industry. AB 633 enabled garment workers to recoup back wages from garment manufacturers that engaged contractors that failed to pay their employees by imposing joint and several liability on the garment manufacturer and contractor. The Act is intended to address deficiencies in AB 633.

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## Hablamos Español

Villegas/Carrera Workplace Solutions provides bilingual workplace investigation services. We facilitate comprehensive workplace investigations in Spanish with Spanish language workers. As lawyers with decades of experience working with Spanish language workers, we understand the specific language nuances embedded in how Spanish language workers communicate, which results in more precise and accurate investigation reports and trainings.



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## Karen's Delicious Latin Kitchen

### Arroz Con Leche

This delicious comfort food can be eaten for dessert, breakfast, or snack. My grandmother in Peru used to make this for my family but now my son's girlfriend whose family hails from Mexico has shown me a new twist to this timeless Latin recipe.

#### Ingredients:

- 4 cups water
- ½ cinnamon stick
- 2 ¼ cups uncooked white rice
- 4 cups whole milk
- 4 cups evaporated milk
- 1/2 cup condensed milk
- 1 ¼ cups brown sugar
- 2 pinches ground cinnamon

#### Instructions

1. Combine water and cinnamon stick in a saucepan over high heat. Bring to a boil and cook until cinnamon releases its color and flavor, about 5 minutes. Add rice, reduce heat to low, cover, and cook until rice is tender, and water is absorbed, about 15-20 minutes.
2. Gradually add whole milk to rice, then evaporated milk, then condensed milk. Stir in sugar. Cook uncovered until sugar is dissolved and mixture has thickened, about 10 minutes stirring often.
3. Serve warm or cold. Sprinkle each portion with ground cinnamon.



Optional: You can garnish with raisins or sliced almonds as desired.

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Villegas Carrera Workplace Solutions specializes in Spanish language and bi-lingual trainings and investigations with Spanish-speaking employees. Topics of trainings include diversity and inclusion, and the prevention of harassment, discrimination, retaliation, and abusive conduct (bullying).

Contact us at [www.vcworkplacesolutions.com](http://www.vcworkplacesolutions.com) or by emailing [karen@vcworkplacesolutions.com](mailto:karen@vcworkplacesolutions.com). Karen Carrera, Esq. is a member of the Association of Workplace Investigators (AWI).

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