

## EMPLOYMENT LAW UPDATE

New Employment Legislation for 2017

*By Shane Cahill and Douglas Melton*

With the New Year comes new legislation affecting California employers. Below is a summary of the new laws for 2017 likely to impact your business.

### **Wage-and-Hour Law**

#### Fair Pay Act - AB 1676 & SB 1063:

California's Equal Pay Act has always prohibited an employer from paying its employees less than employees of the opposite sex for equal work. In 2015, Governor Brown signed the California Fair Pay Act, which strengthened the Equal Pay Act by eliminating loopholes that perpetuated gender-based pay disparities among employees who performed substantially similar work. This year's amendment to the Fair Pay Act precludes employers from considering an employee's prior salary as the sole reason for a pay disparity. That is, employers are prohibited from paying employees of different genders different salaries simply because one of the employees accepted a lesser salary at a previous job. This year's amendment also expands the Fair Pay Act to eliminate pay disparities based on race or ethnicity.

Wage Statements - AB 2535: California Labor Code section 226 mandates that wage statements contain certain information, including the number of hours worked. This law relaxes the law's requirement as to exempt (i.e., non-hourly) employees. Exempt

employees' wage statements no longer need to identify the number of hours worked.

Wage Citation Appeals - AB 2899: Under this new law, employers against whom citations are issued by the Labor Commissioner for failure to pay wages must post a bond in the full amount of wages assessed before they can appeal the Labor Commissioner's decision. If the employer loses the appeal and fails to pay the amount of wages assessed within 10 days from the conclusion of the proceedings, then the employer forfeits the bond.

#### Agricultural Workers' Overtime - AB 1066:

This law, known by the catchy title, "Phase-In Overtime for Agricultural Workers Act of 2016," amends existing law regarding when employers are required to pay overtime wages to agricultural workers. Currently, employers are not required to pay such overtime wages until an employee works more than 10 hours in a day. The amendment will incrementally reduce the number of hours agricultural employees must work before earning overtime wages to 8 hours a day or 40 hours a week. It will also require employers to pay double-time to employees who work more than 12 hours per day. The first of the two-phase process takes effect on January 1, 2019, at which point employers with 26 or more employees will be required to pay overtime wages to employees who work more than 9.5 hours per day or 55

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hours per week. The law takes full effect on January 1, 2022.

**California Minimum Wage:** The process of boosting California's minimum wage to \$15 per hour by 2022 continued with a 50 cent raise, effective January 1, 2017. For 2017 the California minimum wage is \$10.50 for employers with 26 or more employees and \$10.00 for employers with 25 or fewer employees.

**Bay Area Minimum Wages:** Effective July 1, 2017, San Francisco's minimum wage will increase to \$14.00 per hour. Oakland's increased minimum wage increased to \$12.86 on January 1, 2017. San Jose's minimum wage increased to \$10.50 per hour on January 6, 2017 and will increase to \$12.00 per hour on July 1, 2017. Berkeley, (being Berkeley) raises its minimum wage every year on October 1, when it will increase this year to \$13.75 per hour.

Be sure to check your local laws and ordinances to make sure your business is compliant with your city's or county's minimum-wage laws.

### **Discrimination, Harassment, and Retaliation Law**

**Discrimination (AB 488):** The California Fair Employment & Housing Act (FEHA) protects employees against various forms of discrimination based on certain protected characteristics. The new law expands the FEHA's protections to individuals employed under a special license in a nonprofit sheltered workshop, day program, or rehabilitation facility—i.e., mentally or physically disabled employees who, under special license, are permitted to work for less than the legal minimum wage.

**Harassment-Prevention Training (AB 1661):** This law expands existing law regarding mandatory anti-harassment training to certain defined local agency officials. It was enacted in

response to high-profile cases of sexual harassment involving elected officials. The law requires that local agency officials receive two hours of anti-harassment training and education within the first six months of taking office or upon commencing employment.

**Single-User Restrooms (AB 1732):** Beginning on March 1, 2017, any single-user toilet in business establishments, places of public accommodation, and government agencies, will be required to be identified as an all-gender toilet.

### **Leaves of Absence and Benefits**

**Domestic Violence Protection (AB 2337):** Under this law, employers with more than 25 employees must notify each new employee, and others upon request, of the employee's leave-of-absence rights if he or she is a victim of domestic violence, sexual assault, or stalking. The Labor Commissioner is developing a form for employers' use and employers are not required to provide notice until the form is posted.

**San Francisco Paid Parental Leave:** San Francisco's Paid Parental Leave for Bonding with New Child Ordinance entitles employees to six weeks of fully paid leave to bond with a new child. The ordinance will take effect on a graduated basis based on the size of the employer. For more information regarding San Francisco's Paid Parental Leave law, visit <http://www.longlevit.com/publications/employment-law-update-6/>.

### **Employee Protections**

**Choice-of-Law Provisions (SB 1241):** This law prohibits employers from requiring employees who primarily work and reside in California to agree to adjudicate disputes outside of California or pursuant to non-California substantive law. An exception exists for contracts negotiated through the employee's attorney. The law makes any provision of a contract that violates its prohibitions voidable,

upon request of the employee, and requires a dispute over a voided provision to be adjudicated in California under California law. The law applies to all employee contracts (including arbitration agreements) entered into, modified, or extended on or after January 1, 2017.

**Unfair-Immigration Practices (SB 1001):** This law makes it unlawful for employers to request more or different documents than required under federal law to verify employment eligibility. It also prohibits employers from refusing to honor documents tendered that, on their face, reasonably appear genuine, to refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work, or to re-investigate or re-verify an incumbent employee's authorization to work. The law also authorizes an applicant or employee who is subject to an unlawful act to file a complaint with the Division of Labor Standards Enforcement. Any person who violates the law will be subject to a penalty imposed by the Labor Commissioner not exceeding \$10,000 and be liable for equitable relief.

**Background Checks (AB 1843):** This bill prohibits an employer from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. For purposes of the law, "conviction" does not include "any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court law."

The bill also prohibits an employer at a health facility from inquiring into specific events that occurred while the applicant was subject to juvenile court law and from inquiring into

information concerning or related to an applicant's juvenile offense history that has been sealed by the juvenile court. Health facilities, however, can inquire into an applicant's juvenile criminal background if a juvenile court made a final ruling or adjudication that the applicant committed a felony or misdemeanor for certain sex or controlled substance crimes within five years of applying for employment. The law requires an employer at a health facility seeking disclosure of juvenile offense history under that exception to provide the applicant with a list describing offenses for which disclosure is sought.

### **Transportation Companies**

California enacted a series of laws impacting for-hire transportation and "transportation network companies" (e.g., Uber, Lyft, etc.). Effective January 1, 2017, AB 1289 requires transportation network companies to conduct criminal-background checks on participating drivers. Such transportation companies cannot contract with drivers registered as sex offenders or who have been convicted of other serious, violent, or drug-related crimes within the last seven years.

Effective July 1, 2018, AB 2687 will make it unlawful to operate a vehicle with a blood alcohol level of above 0.04% if the driver is transporting a passenger for hire.

### **Conclusion**

Employers should review their impacted policies and procedures to ensure compliance with these new laws. If you have any questions about California's new employment laws and how they might impact your business, contact our Employment Law Group.