



## **CALIFORNIA EMPLOYMENT LEGISLATION 2013 END-OF-SESSION SUMMARY**

October 13 marked the last day for Governor Brown to sign into law, or veto, bills passed by the California Legislature. Several of these laws signed by the governor will impact many California employers. To prepare you for these changes, and assist with your compliance, we provide a brief summary of some of the key California employment related laws followed by recommended actions. Unless otherwise specified, the following new laws will become effective on January 1, 2014.

### **Minimum Wage AB 10**

This law increases the current California state minimum wage of \$8.00 hour by two dollars over the next two years. The first increase to \$9.00 per hour will take effect on July 1, 2014. On January 1, 2016, the minimum wage will increase to \$10.00 per hour. This minimum wage increase also affects the salary threshold for the executive, administrative and professional exemption, which is based on a monthly salary that is two times the minimum wage for a full time employee. Keep in mind that some cities, such as San Jose and San Francisco, have their own local minimum wage ordinances that impose higher minimum wages for employees working in those cities.

### **Sex Harassment SB 292**

The Fair Employment and Housing Act prohibits workplace harassment because of sex, which includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth or related medical conditions. This new law clarifies that to incur liability, sexually harassing conduct need not be motivated by sexual desire. Particularly with respect to same-sex sexual harassment claims, this new law will make it easier to prove sexual harassment for which an employer might be liable.

### **Paid Family Leave Benefit SB 770**

Currently, the Family Temporary Disability Insurance program (also known as Paid Family Leave program) provides for partial wage replacement benefits when employees take time off work to care for ill children, parents and spouses or domestic partners. This new law expands the persons for whom the employee may obtain benefits to ill siblings, grandparents, grandchildren, and parents-in-law. The law does not become effective until July 1, 2014.

**Domestic Workers Bill of Rights  
AB 241**

Wage Order 15 historically provided an exemption from overtime for individuals who qualify as “personal attendants.” This law eliminates that exemption, and requires that “domestic work employees” must be paid one and one-half times their regular rate of pay for all hours worked in excess of nine hours in one day or forty-five hours in one week. “Domestic work employees” are defined to include childcare providers, housekeepers, maids, caregivers to persons with disabilities, sick, convalescing, or elderly persons, and other household occupations. Domestic work employees who are close relatives, casual or minor babysitters, or employees providing care to persons in facilities providing lodging (e.g., residential care facilities for the elderly) are excluded. This law takes effect January 1, 2014 and has an expiration date of January 1, 2017. Home care organizations should also be aware of the newly enacted Home Care Services Protection Act (AB 1217) which, starting January 1, 2015, will require certain agencies to be licensed with and regulated by the State. It also requires home health aides to be registered, after having a background clearance.

**Unfair Immigration Practices  
AB 263 and SB 666**

These two new laws, passed together, seek to protect immigrants by making it unlawful for an employer to engage in an unfair immigration-related practice, such as taking adverse action based on an applicant’s or employee’s citizen or immigration status, or threatening to contact law enforcement, including immigration enforcement officials, for the purpose of retaliating against that person for exercising a right protected under state labor and employment laws or local ordinance. This new law also expands protected conduct to include a written or oral complaint by an employee that he or she is owed unpaid wages. The law would create a rebuttable inference that an adverse action taken within 90 days of the exercise of a protected right is committed for the purpose of retaliation. In addition to providing remedies of reinstatement and reimbursement for lost wages and work benefits, the new law would, among other things, subject an employer to a civil penalty not to exceed \$10,000 per violation, authorize a civil action, and authorize a court to order the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations.

**Domestic Violence Survivors  
AB 400**

Labor Code Section 230(c) prohibits an employer from taking adverse employment action against a victim of sexual assault or domestic violence for taking time off of work to obtain relief to ensure the health and safety of the victim or his or her child. This new law expands the scope of persons to whom these protections apply, and also expands the protections provided. First, this law expands the protections to victims of stalking. This law also requires employers to provide reasonable accommodations to victims of sexual assault, domestic violence, or stalking. Finally, this law prohibits an employer from discharging, discriminating, or retaliating against an employee because of the employee’s status as a victim of domestic violence, sexual assault, or stalking.

**Military and Veteran Status  
AB 556**

This law amends the Fair Employment and Housing Act to add military and veteran status to the list of those categories protected from unlawful employment discrimination.

## **Training for emergency rescue personnel**

### **AB 11**

California Labor Code Section 230.4 requires employers with 50 or more employees to allow employees who are volunteer firefighters to take temporary leaves of absence of up to 14 days in a calendar year for the purposes of participating in firefighting or law enforcement training. This new law expands the statutory provision to also allow reserve peace officers and emergency rescue personnel to take the same amount of time off for training. The law also protects such employees who take time off for relevant training from discharge or discrimination for doing so.

## **Expanded Protection of Crime Victims**

### **SB 288**

Labor Code Section 230 provides for time off from work for a victim of a crime to appear in court as a witness. This new law expands the purposes for which an employee who is a victim of certain specified crimes may take time off work to appear in court. Such purposes include so that the employee/victim may be heard in regard to a post-arrest release decision, plea, sentencing, post-conviction release decision, or other proceeding in which a right of the victim is at issue.

## **Farm Worker Labor**

### **SB 168**

Labor Code Section 1698.9 requires farm worker contractors to register with the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. This new law would make a farm labor contractor successor liable for unpaid wages and penalties of the predecessor farm labor contractor, if the successor meets certain criteria, including: (i) uses substantially the same facilities or workforce to offer substantially the same services as the predecessor; (ii) shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor farm labor contractor; (iii) employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor; or (iv) is an immediate family member (spouse, parent, sibling, child, uncle, aunt, niece, nephew, or grandparent) of any owner, partner, officer, licensee, or director of the predecessor farm labor contractor or of any person who had a financial interest in the predecessor farm labor contractor.

## **Recovery Period**

### **SB 435**

Labor Code Section 226.7 prohibits employers from requiring employees to work during a meal or rest period mandated by an applicable Order of the Industrial Welfare Commission, and establishes penalties for doing so (one additional hour of pay at the employee's regular rate of compensation for each workday that a meal or rest break is not provided). Since 2005, certain employers have also been required to provide recovery periods (cool-down periods) to employees working in applicable outdoor work places. This law amends section 226.7 to include recovery periods, such that an employer may not require an employee to work during the mandated recovery period, and if the employer fails to provide the recovery period, as required, it must pay the employee one additional hour of pay.

## **Recovery of Attorneys' Fees and Costs for Prevailing Party**

### **SB 462**

Currently, in any action brought for the nonpayment of wages (except minimum wage and overtime), fringe benefits, or health and welfare or pension fund contributions, the prevailing party is entitled to recover its

attorneys' fees and costs. This law provides that when the prevailing party is not an employee, attorneys' fee and costs may be awarded only when the court finds that the employee brought the action in bad faith. This higher standard makes it more difficult for an employer to obtain attorneys' fees and costs when it is the prevailing party, and may incentivize employees to bring more lawsuits. It also fails to address the circumstance when an independent contractor unsuccessfully brings an action for wages or benefits based on alleged misclassification.

### **San Francisco Family Friendly Workplace Ordinance (Applicable in San Francisco only)**

Applicable to employers with more than 20 employees, this local ordinance formalizes the process by which employees can request flexible working conditions to accommodate caregiving responsibilities including a change in start time, part-time and part-year schedules, telecommuting, and schedule predictability. Under the new ordinance if an employer receives a request for flexible work conditions, the employer is required to meet with the employee within 21 days, provide a written response, and in the case of denial, provide details of the bona fide business reasons for the denial.

### **Note that the following controversial bills did NOT become law this session:**

#### **Mixed Motive Discrimination (VETOED by Governor)**

##### **SB 655**

This bill was vetoed by Governor Brown on October 10, 2013. Had it become effective, it would have lessened the burden for employees to prevail in discrimination lawsuits involving a mixture of legitimate and illegal motives, by requiring only that the discriminatory reason was "more than a remote or trivial factor." The proposed bill would also have allowed employees to recover statutory damages up to \$25,000, in addition to attorneys' fees and injunctive relief. The proposed bill was in reaction to *Harris v. City of Santa Monica*, in which the California Supreme Court earlier this year held that an employee in a mixed motive case must prove that the discriminatory motive was a "substantial factor" in an adverse employment action, after which an employer can preclude the employee from recovering damages, backpay or reinstatement by demonstrating that it would have taken the same action absent discrimination.

#### **Fair Employment: Familial Status (HELD in Committee until 2014)**

##### **SB 404**

This proposed amendment to the Fair Employment and Housing Act would add familial status to the list of those categories protected from unlawful employment discrimination. Specifically, familial status is defined to cover individuals who provide medical or supervisory care to a child, parent, spouse, domestic partner, or a parent-in-law.

Many labor and employment laws and regulations carry with them significant liabilities and penalties for non-compliance. Others may carry no specific penalty, but noncompliance may give the appearance that the employer is careless or indifferent to employee rights. Prudent employers should regularly review their documentation and policies and update them not only to ensure they comply with the latest laws, but also with the realities of their particular workplace, practices, and personnel. We recommend employers take the following proactive measures prior to January 1, 2014:

- Review your employee handbook and employment policies, to make sure you capture all changes in the law since your last review. For handbook updates effective January 1, 2014 and after,

consider amending policies to reflect the new laws above, including protection for victims of stalking, adding military and veterans status to the bases upon which employment discrimination is prohibited, the availability of leaves for emergency rescue personnel training, and the provision for a recovery period, if relevant.

- Educate supervisors and managers about the new laws and updates to policies, so that they are prepared to comply with them.
- Check your training records to ensure that employees are up to date on required training. Employers with 50 or more employees must provide at least two hours of training on the prevention of sexual harassment to all supervisory employees in California every two years. New supervisory employees must be given this training within 6 months of becoming a supervisor. Ensure that the training is consistent with the new law concerning the standard for sexually harassing conduct.
- Review your new hire materials to ensure you are providing the required information and pamphlets at the time of hire, including the Paid Family Leave brochure (DE 2511).
- If you are a home health care agency, you may need to reassess the exempt status of any personal attendants in light of the new domestic workers law.
- Make sure you are informed of your company's obligations under the Affordable Care Act, which will continue to be rolled out over the next several years. For example, by October 1, 2013 all employers covered by the Fair Labor Standards Act should have provided their employees with an Affordable Care Act Exchange Notice.

For further information regarding the above listed new employment related laws, or assistance with employment practices compliance generally, please contact your SRC employment attorneys:

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