



CALIFORNIA EMPLOYERS SHOULD PREPARE FOR NEW 2015 LAWS

The deadline has now passed for Governor Brown to sign into law, or veto, the more than 1,000 bills passed by the California Legislature this session. As usual, many of these bills signed by the Governor will impose new obligations or restrictions on many California employers. To prepare you for these changes, and assist with your compliance, below we provide a brief summary of some of the key California employment-related laws and recommended action items. Unless otherwise specified, the following new laws will become effective on January 1, 2015.

Mandatory Paid Sick Leave AB 1522

Known as the Healthy Workplaces, Healthy Families Act of 2014, this law requires employers to provide paid sick leave to any employee who, on or after July 1, 2015, works in California for 30 or more days within a given year. Eligible employees are entitled to accrue paid sick days at a rate of no less than one hour for every 30 hours worked. This accrual is subject to certain limitations and the law prohibits employers from discriminating or retaliating against any employee who requests paid sick days. There are also posting, notice, and recordkeeping requirements. For more details please see our recent e-Alert on this law, which becomes effective on July 1, 2015: [> click here](#)

Expanded Discrimination/Harassment Protections for Volunteer and Unpaid Interns AB 1443

The California Fair Employment and Housing Act ("FEHA") prohibits employers from discriminating against persons seeking or holding employment, or seeking or participating in a training program leading to employment, based upon the person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Existing law also prohibits the harassment of applicants, employees, or persons providing services pursuant to a contract based upon these same characteristics. This new law amends the FEHA and specifically extends its protections to volunteers, unpaid interns, and those persons seeking, being hired for, or being terminated from, an unpaid internship or volunteer program.

Discrimination Based on Driver's License AB 1660

Starting January 1, 2015, the Department of Motor Vehicles will be required to issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the Department of his or her identity and California residency. This law will make it unlawful for an employer or other covered entity to: (i) discriminate against an individual because he or she

holds or presents a driver's license issued under these provisions or (ii) require a person to present a driver's license unless required by law or the employer's otherwise lawful policy. Additionally, this law amends the FEHA to specify that discrimination on the basis of "national origin" includes discrimination on the basis of possessing a driver's license granted under the above provisions. However, this law specifically provides that any action taken by an employer to comply with federal immigration law will not violate this new law.

Discrimination Based on Medi-Cal Benefits AB 1792

The Medi-Cal program provides health care benefits to qualified low-income persons. Under this law, which expires in 2020, an "employer" (defined as an individual or organization that employs 100 or more Medi-Cal beneficiaries in the state) is prohibited from discharging, or in any manner discriminating or retaliating against, an employee who enrolls in the Medi-Cal program and from refusing to hire a beneficiary for being enrolled in the Medi-Cal program. Additionally, employers are prohibited from disclosing to any person or entity that an employee receives or is applying for public benefits unless otherwise authorized by state or federal law. Beginning in 2016, this law will also require the Department of Finance to issue a report identifying the 500 employers with the highest number of employees enrolled in Medi-Cal and to provide this report to the Legislature and post it on the Department's website in January of each year.

Employer Joint Liability for Contract Labor AB 1897

Subject to certain exceptions, this law requires client employers who have at least 25 employees and at least 6 nonexempt workers supplied by a staffing agency or other labor contractor to share joint legal responsibility and liability with the labor contractor for the payment of wages and any failure to obtain valid workers' compensation coverage for such workers. A "client employer" is defined as a "business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor." This law, however, does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies for violations of its provisions by either party.

Sexual Harassment Training to Include Training on Abusive Conduct AB 2053

Existing law requires employer with more than 50 employees to provide a minimum of 2 hours of sexual harassment training to their supervisors every 2 years. This new law provides that the mandatory training now include training and education on "abusive conduct." "Abusive conduct" is defined as "conduct of an employer or employee in the workplace with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Such conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance." The new law does not specify how much time must be allocated to training on abusive conduct. Notably, although the new law requires such additional training, the law does not make "abusive conduct" that is not based on a protected characteristic unlawful.

Emergency Rescue Personnel Protections Expanded AB 2536

Existing law prohibits an employer from discharging, or discriminating against, an employee for taking time off to perform emergency duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel. This law expands the definition of "emergency rescue personnel" to include an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. This law also requires an employee who is a "health care provider" to notify his or her employer at the time the

employee becomes designated as emergency rescue personnel and when the employee is notified that he or she will be deployed as a result of that designation.

**Rest and Recovery Periods Must be Paid
SB 1360**

Existing law prohibits employers from requiring employees to work during a rest and recovery period taken in accordance with heat illness regulations. This new law clarifies that the “recovery period” must be counted as time worked, and therefore is paid. As a reminder, this law, designed to prevent heat-related illness, applies to all employers with outdoor places of employment. A previous amendment, effective January 1, 2014, clarified that violation of this requirement creates civil liability in the amount of one hour of pay to employees for each workday the recovery period break is not provided.

**Workplace Safety Reports via Email
AB 326**

Current law requires that employers immediately report by telephone all work-related serious injuries, illnesses, or deaths to the Division of Occupational Safety and Health. This new law will permit employers to also use email to make these reports.

**Health Insurance
SB 1034**

Existing California state law relating to waiting period limitations for health care coverage has been inconsistent with the federal waiting periods. This new law eliminates those inconsistencies and clarifies that employer-imposed waiting periods are governed by the 90-day period authorized under the federal Patient Protection and Affordable Care Act.

**More Time to Appeal Unemployment Decisions
SB 1314**

Under existing law, employers and claimants have had only 20 days from the date of notice of a ruling to seek an appeal of an unemployment benefits determination. Effective July 1, 2015, the deadline for seeking an appeal will be extended to 30 days from the date of the notice of ruling.

**Waiver of Civil Rights Limitations
AB 2617**

Existing law provides that all persons within the jurisdiction of California have the right to be free from any violence or intimidation by threat of violence because of political affiliation, or on account of position in a labor dispute, or because of sex, race, color, religion, ancestry, national origin, disability, or medical condition, or because another person perceives them to have one or more of those characteristics. This law prohibits a person from requiring a waiver of the protections described above as a condition of entering into a contract for the provision of goods or services, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General, any other public prosecutor, law enforcement agency, the Department of Fair Employment and Housing, or any other court or governmental entity. The new law also requires that the waiver of any of these protections must be knowing, voluntary, and in writing.

Farm Labor Contractors Harassment Training/Licensing Requirements SB 1087

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws. This new law prohibits the granting of a farm labor contractor license to any person who, within the preceding 3 years, has been found by a court or an administrative agency to have committed sexual harassment of an employee or who, within the preceding 3 years, employed any supervisory employee whom it knew, or should have known, has been found by a court or administrative agency to have committed sexual harassment within 3 years prior to employment.

This law further requires that farm labor contractors certify that they have provided supervisors with at least two hours of training on sexual harassment prevention each calendar year and that all nonsupervisory employees have been trained on sexual harassment prevention at the time of hire and once every two years during employment. This law also increases the annual educational requirement for license applicants from 8 to 9 hours with one of those hours dedicated to sexual harassment prevention training.

Please note, the above summaries address only a few of the many bills that were signed into law this year.

Bills That Were Vetoed. Below are two controversial bills that did NOT become law this session:

Employment Discrimination: Status as Unemployed (VETOED by Governor) AB 2271

Had this bill become effective, it would have made it unlawful for an employer, employment agency, or a person who operates an Internet website for California job postings to publish a job advertisement or announcement that indicates that current employment is a job requirement, unless it is a bona fide occupational qualification. The law also sought to prohibit an employer or agency from asking an applicant to disclose information concerning the applicant's current employment status until the employer has determined that the applicant meets minimum employment qualifications. In his veto message, Governor Brown indicated he agreed with the intent, but not the approach, of the bill.

Limitation on Franchise Contract Rights (VETOED by Governor) SB 610

SB 610 sought to amend the California Franchise Relations Act in various ways to enhance protections for franchisees. Among other things, had the bill passed, it would have eliminated the current "good cause" standard for terminating a franchise agreement prior to expiration of its term and, instead, allowed such termination only in the case of a "substantial and material breach on the part of the franchisee of a lawful requirement" of the agreement. In his veto message, Governor Brown advised that he was open to increasing the protections for franchisees to eliminate any predatory practices, but believed that issues addressed in this bill were not clear and that a more collaborative solution, was warranted.

Take Note of Activity Involving Local Laws in Berkeley, San Diego, San Francisco and Oakland

Berkeley Raises Minimum Wage

Effective October 1, 2014, the City of Berkeley raised its minimum wage for all employees working within the city limits to \$10 per hour.

San Francisco Fair Chance Ordinance


The San Francisco Fair Chance Ordinance, which took effect in August 2014, places conditions on an employer's use of arrest and conviction information and records for applicants and employees who will be, or who are presently, performing work within the City or County of San Francisco. The ordinance applies to all employers with 20 or more employees (no matter where they are located) and, among other things, prohibits questions about the individual's conviction history or unresolved arrests until after an employer has either conducted a live interview with the applicant or made a conditional offer of employment to the applicant. The ordinance also requires that employers follow certain procedures and restrictions when inquiring about and using conviction history information.

Minimum Wage Increase for San Francisco and Oakland on the November Ballots

On November 4, 2014, the Cities of San Francisco and Oakland will vote on whether to increase the minimum wage in those cities to \$12.25 an hour effective May 1, 2015 in San Francisco and March 2, 2015 in Oakland. The Oakland measure, if passed, would also require that employers provide employees with up to five days of sick leave, with larger businesses required to provide up to nine days of sick leave.

The City of San Diego Minimum Wage and Sick Leave Ordinance Pushed to Ballot Measure for Voter Consideration

In July 2014, the San Diego City Council approved an ordinance that would have raised the minimum hourly wage for employees working within the City of San Diego to \$9.75 in January 2015, \$10.50 in January 2016, and to \$11.50 by January 2017. The ordinance would also have required all employers in the City of San Diego to provide their employees with 5 days of paid sick leave. In August 2014, Mayor Kevin Faulconer vetoed the ordinance and the San Diego City Council later voted to override the Mayor's veto. Opponents of the ordinance were then able to collect a sufficient number of petition signatures to force the issue to be placed on the ballot and allow the voters of San Diego to decide whether the ordinance should become law. On October 20, 2014, the San Diego City Council voted unanimously to place this issue on the ballot in June 2016 (unless an earlier special election is held). As a result, the minimum wage for those employed in San Diego will remain unchanged and San Diego employers for now will need to abide only by the state minimum wage and new statewide paid sick leave requirements.



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 to ensure they comply not only with the latest laws, but also with the realities of their particular workplace, practices, and personnel. We recommend employers take the following proactive measures:

- Review and revise your paid leave policies to ensure that they comply with the new paid sick leave requirements prior to July 1, 2015.
- Educate payroll departments regarding the new requirements for tracking accrued sick leave benefits.

- Make sure that as of July 1, 2015, you provide all new nonexempt employees with a revised Wage Theft Protection Act (“WTPA”) Notice that specifically addresses California sick leave accrual requirements.
- Review your employee handbook and employment policies to make sure you capture all changes in the law since your last review. Handbook updates effective January 1, 2015, and after, should take into account the new laws above, including protection for unpaid interns and volunteers, rest and recovery periods, and expansion of the definition of emergency rescue personnel. In addition, you may wish to specifically prohibit abusive conduct by supervisors in your policies.
- Educate supervisors and managers about the new laws and updates to policies so that they are prepared to comply with them.
- If you have more than 6 nonexempt contract workers supplied by a staffing agency or labor contractor, you should take steps to ensure the agency or other labor contractor is properly paying wages and has valid workers’ compensation insurance coverage.
- Make sure that you have up-to-date employment law postings that include the new laws.
- For those employers with 50 or more employees, check your training records to ensure that supervisors are up to date on required sexual harassment training and are receiving 2 hours of sexual harassment prevention training every 2 years (and within 6 months of becoming a supervisor). Review your sexual harassment training materials and make sure that the training curriculum for supervisors now includes education on preventing “abusive conduct” in the workplace. While “abusive conduct” in the abstract is not unlawful, it can easily lead to claims of unlawful behavior based on the target’s membership in a protected class. Make sure to advise supervisors that abusive conduct is a serious concern, that it will not be tolerated, and that it will lead to disciplinary action up to, and including, termination of employment.

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

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