



FALL IN LINE: MULTITUDE OF NEW LAWS FOR CALIFORNIA EMPLOYERS

The Fall deadline for Governor Brown to sign or veto bills passed by the California Legislature this session has come and gone. We now know what new or additional obligations or restrictions will be imposed on California employers. The new laws cover a broad spectrum of requirements, ranging from new employee protections pertaining to wages, discrimination and arbitration agreements, to hot topics in the workplace such as sick leave, same-sex bathrooms, and cell phone use while driving. To prepare you for these changes, and assist with your compliance, we have prepared a brief summary of some of the key California employment-related laws that may affect our clients. Unless otherwise specified, the new laws will become effective on January 1, 2017.

Bills Signed Into Law By Governor

Expansion of Minimum Wage and Paid Sick Leave

SB 3

SB 3 incrementally increases the state minimum wage from \$10.50 per hour beginning January 1, 2017 to \$15.00 per hour by January 1, 2022. The minimum wage law includes a one-year lag for businesses with 25 or fewer employees. Additionally, SB 3 expands coverage of the California Healthy Workplaces, Healthy Families Act of 2014, which entitles employees to paid sick leave, to providers of in-home supportive services, effective July 1, 2018.

Limits on Employers' Choice of Law and Venue Provisions in Employment Agreements

SB 1241

SB 1241 prohibits an employer from requiring an employee who resides and works in California to agree, as a condition of employment, to an employment provision that would (i) require the employee to adjudicate outside of California any claim arising in California, or (ii) deprive the employee of the substantive protection of California law with respect to a controversy arising in California. The law does not apply to employees who are represented by legal counsel during the contractual negotiations.

Same-Sex Bathrooms

AB 1732

This law requires all single-user toilet facilities in any business establishment, place of public accommodation, or government agency to be identified as "all-gender" toilet facilities. The law will be effective on March 1, 2017.

Employers to Provide Written Notice of Right to Leave for Domestic Violence, Sexual Assault and Stalking
AB 2337

This new law requires employers to inform each employee of his or her employment leave rights as a possible victim of domestic violence, sexual assault, or stalking, by providing this information in writing to new employees upon hire, and to other employees upon request. The law requires that the Labor Commissioner develop (by July 1, 2017) a form that employers may elect to use.

Pay Equity and Prior Salary History
AB 1676

This law prohibits employers from considering prior salary history to justify a gender-based wage differential. Existing law prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex for the same work requiring the same skill, effort, and responsibility. Existing law also provides an exception where payment is based on a bona fide factor other than sex, such as education, training, or experience. AB 1676 clarifies that prior salary does not fall within the bona fide factor exception.

No Duty to Track “Hours Worked” on Itemized Wage Statements for Exempt Employees
AB 2535

This legislation clarifies that employers are not required to list the number of hours worked on wage statements for certain employees who are exempt from minimum wage and overtime under a specified exemption, including executive, administrative or professional employees, outside sales employees and salaried computer professionals.

Restrictions on Use of Wireless Electronic Devices in Vehicles
AB 1785

AB 1785 expands the existing hands-free law by making it illegal to hold and operate a cell phone while driving. If an individual has a cell phone holder attached to a car, he or she can legally swipe at the phone while driving. However, launching apps and surfing the web will now be outlawed.

Prohibition on Inquiring About Juvenile Court Actions
AB 1843

This law prohibits employers from asking an applicant to disclose any information regarding juvenile convictions. It also prohibits employers from seeking or using any information related to juvenile arrests, detentions, or court dispositions as a factor in their employment determination. The legislation contains a limited exception for employers at health facilities.

Wage and Equality Act Race/Ethnicity Based Disparities
SB 1063

SB 1063 expands the provisions of the Fair Pay Act of 2015 to prohibit employers from paying employees a wage less than the wage paid to employees of a different race or ethnicity for substantially similar work. The law also follows the prior salary prohibition rule outlined in AB 1676.

**Expansion of Paid Family Leave Benefits
AB 908**

This legislation will increase the level of benefits (from 55 percent to 60 or 70 percent depending on income) that employees receive under the Paid Family Leave and State Disability Insurance programs. Effective January 1, 2018, this law will also remove the seven-day waiting period before which employees would be eligible for family temporary disability benefits.

**Expansion of FEHA to Cover Employment Eligibility Verification Practices
SB 1001**

SB 1001 expands FEHA to make it an unlawful employment practice under FEHA for an employer to request more or different documents than are required under federal law, to refuse to honor documents tendered that on their face reasonably appear to be 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 reinvestigate or re-verify an incumbent employee's authorization to work.

**Unemployment Insurance Appeals
AB 2886**

This law extends the time for filing an appeal for state disability and paid family leave benefits from 20 to 30 days.

**Notifications and Postings Regarding Federal Income Tax Credit
AB 1847**

This law would compel some employers required to notify employees who may be eligible for the Federal Earned Income Tax Credit to also notify these employees they may be eligible for the California Earned Income Tax Credit under the same conditions.

**Bond Requirements for Minimum Wage Violations
AB 2899**

This new law updates the existing bond requirements under the Labor Code. It requires employers to file a bond with the Labor Commissioner prior to filing an appeal related to wage law violations. The bond must be issued in favor of an unpaid employee and must cover the total amount of any minimum wages, liquidated damages, and overtime compensation owed. The law further provides that if an employer fails to pay owed amounts within ten days of the conclusion of any wage law violation proceedings, the bond will be forfeited to the unpaid employee.

**Increased Local Enforcement to Combat Wage Theft
SB 1342**

This law provides that a legislative body of a city or county may delegate certain wage theft enforcement roles to a county or city official, or to an appropriate department head. These roles include the authority to issue subpoenas, enforce local laws and ordinances including local wage laws, and report noncompliance to a county superior court judge.

Workers' Compensation Coverage and Insurance AB 2883

AB 2883 clarifies the rules that govern when owners or officers of businesses may exclude themselves from workers' compensation coverage. It also adds provisions that specify how officers and owners of employers can declare that they are not "employees" of the company for purposes of workers' compensation insurance.

Heat Illness Prevention Regulations for Indoor workers SB 1167

Effective January 1, 2019, SB 1167 requires the Occupational Safety and Health Administration to propose standards for heat illness prevention for indoor workers, similar to those currently in place for outdoor workers.

Prevention of Discrimination in Public Contracts AB 2844

Certain exceptions aside, AB 2844 requires prospective state contractors, attempting to enter into a contract with the state in the amount of \$100,000 or more, to certify under penalty of perjury that they are in compliance with preexisting anti-discrimination laws (i.e. Unruh Civil Rights Act and the California Fair Employment and Housing Act). Such contractors must also certify that any business practices or policies they have against a sovereign nation (including but not limited to the nation of Israel) will not be used to unlawfully discriminate.

Commuter Benefits in San Francisco Bay Area SB 1128

SB 1128 removes the January 1, 2017 sunset provision from a pilot program under state law requiring employers (with at least 50 full-time employees) in the San Francisco Bay Area to offer tax-free transit benefits to their employees.

Note that additional laws pertaining to **special license employees (AB 488)**, **commercial online entertainment employment service providers (AB 1687)**, and **barbers and cosmetologists (AB 2437 and AB 2025)** will also become effective in 2017.

2016 Laws in Effect Right Now

Several new laws were enacted earlier this year that currently require compliance. As a reminder, below are a few laws that became effective mid-year that are likely to impact California employers.

New Workplace Smoking Prohibitions (No Vaping Either) SB 5 and AB 7

Labor Code section 6404.5 prohibits smoking of tobacco products inside an enclosed space at a place of employment. SB 5 updated the definition of "smoking" under this section to include electronic and oral smoking devices. AB 7 specified that Section 6404.5 applies to businesses where the "owner-operator" is the only employee. AB 7 also eliminated certain exemptions that permit smoking in work environments such as hotel lobbies, bars, banquet rooms, warehouse facilities, and employee break rooms. These bills took effect on June 9, 2016.

**Private General Attorneys Act
AB 836**

SB 836, which took effect on June 27, 2016, made important changes to the Private General Attorneys Act (PAGA). The new law provides that the Labor and Workforce Development Agency (LWDA) may take up to sixty days (instead of thirty days) to review a notice under Labor Code 2699.3(a). The law also includes updated guidelines pertaining to filing fees, mode of filing and sending PAGA claim notices, ways of filing and serving employer cure notices, documents required by the LWDA and mode of submitting such documentation, and necessity of court approval after settlement of PAGA action. Many of these requirements apply prospectively to all pending PAGA cases as well as new filings.

Significant Bills That Were Vetoed or Not Passed

Below are a handful of the more controversial Bills that either were passed by the Legislature but vetoed by the Governor, or failed to pass, and therefore did not become law this session. Clients should keep an eye out for similar measures in future legislative sessions.

**New Parent Leave Act (VETOED by Governor)
SB 654**

This bill would have significantly expanded California's parental leave laws by requiring employers with 20-49 employees to provide up to 6 weeks of job protected parental leave to bond with a new child. In his veto message, the Governor noted the state has a number of paid and unpaid benefit programs to provide for parent-child bonding leave, and he was concerned about the impact of this leave on small businesses.

**Arbitration – Civil Procedure (VETOED by Governor)
AB 1078**

This bill would have prohibited an arbitrator in consumer arbitrations from entertaining or accepting any offers to act as a dispute resolution neutral in another case involving a party or lawyer for a party in the pending arbitration, except with prior written consent of the parties. In his veto message, the Governor stated he believed that the current disclosure requirements applicable to arbitrators adequately address the concerns raised in this bill.

**DLSE Investigations (Failed to Pass)
AB 2261**

This law would have authorized the Labor Commissioner to commence investigations even if no complaint had been made.

Take Note of Activity Involving Local Laws in San Francisco, Santa Monica, San Diego, Los Angeles, and Berkeley

In addition to the new state laws, California employers must remain diligent about keeping up with changes in local laws.

San Francisco's Paid Parental Leave Ordinance

San Francisco is once again at the forefront in expanding mandatory employee benefits. The Paid Parental Leave Ordinance requires employers in San Francisco to provide up to six weeks of supplemental compensation to employees who receive state Paid Family Leave (PFL), for the purpose of bonding with

a new child. The ordinance will apply to employers with 50 or more employees as of January 1, 2017, employers with 35 or more employees as of July 1, 2017, and employers with 20 or more employees as of January 1, 2018.

San Francisco Minimum Wage and Paid Sick Leave

Effective July 1, 2016, the minimum wage for San Francisco employees increased to \$13.00 per hour, with scheduled annual increases each year.

San Francisco also recently amended its Paid Sick Leave Ordinance to be more consistent with California state requirements.

Santa Monica Minimum Wage and Paid Sick Leave

The City of Santa Monica has passed a new ordinance that incrementally increases the city-wide minimum wage from \$10.50 beginning July 1, 2016 to \$15.00 beginning July 1, 2020 for businesses with 26 or more employees. There is a one-year lag for businesses with 25 or fewer employees. Non-profit corporations may apply for a deferral if they meet certain requirements.

Effective January 1, 2017, Santa Monica employers will be subject to new Paid Sick Leave (PSL) requirements. The Santa Monica ordinance contains specific provisions regarding covered individuals, approved purposes, accrual rate, accrual limits, use of PSL, and carrying PSL over to another year.

San Diego's Minimum Wage and Paid Sick Leave Ordinance

On June 7, 2016 San Diego city voters passed Proposition I, an ordinance which increased the minimum wage to \$10.50 and provided for a new paid sick leave benefit for employees within the City of San Diego, effective July 11, 2016. [See the e-alert on our website dated June 14, 2016.](#)

Implementing guidance, approved August 3, 2016, and effective September 2, 2016, provided further clarification on the implementation of the paid sick leave benefit.

Los Angeles Minimum Wage and Paid Sick Leave

On June 2, 2016, the Mayor of Los Angeles signed an ordinance that increased the City minimum wage to \$10.50 per hour for employers with more than 26 employees. Employees with 25 or fewer employees are required to pay a minimum wage of \$10 per hour. The ordinance requires annual increases to this minimum wage.

The LA minimum wage ordinance also included new Paid Sick Leave (PSL) provisions. [See the e-alert on our website dated June 14, 2016.](#)

Berkeley Minimum Wage and Paid Sick Leave

On August 31, 2016, Berkeley's City Council passed a Minimum Wage and Paid Sick Leave (PSL) ordinance. Under the ordinance, the minimum wage increased to \$12.53 as of October 1, 2016 and will increase to \$15.00 as of October 1, 2018. The PSL provides for paid sick leave requirements that are more generous than the state paid sick leave requirements.

In addition to the above, **employers should also be alert for local minimum wage rate increases in several other jurisdictions.**

Recommended Action Items

We recommend that employers review and update their employee handbooks, and employment policies and practices, to make sure they capture all changes in the law since the last review.

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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