

## California Legislative Update

California Governor Jerry Brown recently signed six new bills into law that have a variety of implications for employers with California employees. Employers are advised to review these new laws with an eye towards bringing their policies and practices into compliance by the end of the year. The following is a brief overview of the recent applicable California legislation as well as a recent San Francisco Family Friendly Workplace Ordinance.

**FEHA Military and Veteran Status, AB 556:** AB 556 adds “military and veteran status” to the list of protected categories for employment discrimination purposes under California’s Fair Employment and Housing Act (“FEHA”). The bill expands FEHA’s protections to members of the military and veterans who were not previously protected under the law. Notwithstanding this expansion, the bill also provides an exemption allowing employers to consider military or veteran status for purposes of awarding a veteran’s preference. AB 556 goes into effect July 1, 2014.

**Employee Wage Withholdings: Failure to Remit, SB 390:** Section 227 of the Labor Code currently provides for criminal liability on employers who fail to make agreed-upon payments to health and welfare funds, pension funds, or other various benefit plans. SB 390 amends Section 227 by expanding the definition of what constitutes a crime in such circumstances by also making it a crime for an employer to fail to remit an employee’s wage withholdings. SB 390 goes into effect January 1, 2014.

**Compensation for Meal and Rest or Recovery Periods, SB 435:** SB 435 amends Labor Code section 226.7, and expands the law prohibiting employers from requiring employees to work during meal or rest periods to encompass “recovery periods” mandated by statute,

regulation, standard or order of the Industrial Welfare Commission (“IWC”), the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. “Recovery period means a cooldown period afforded to an employee to prevent heat illness.” Significantly, the bill mandates that employers who violate this code section will be required to pay the employee one additional hour of pay at their regular rate for each workday where the “recovery period” is not provided. SB 435 goes into effect January 1, 2014.

**Criminal Background Check Limitations on Government Agencies, AB 218:** AB 28 amends section 432.9 of the Labor Code to prevent state and local agency employers from asking applicants to disclose criminal history information, either in an application or otherwise, until after the applicant meets the minimum qualifications for the position. The bill does not apply to state or local agencies where a conviction history background check is required by law. The bill adds to existing laws that prohibit both public and private employers from asking applicants for information concerning an arrest or detention that did not result in a conviction. AB 28 goes into effect July 1, 2014.

**Farm Labor Contractors: Wages and Penalties, SB 168:** AB 168 imposes successor liability on any farm labor contractor where the predecessor owed wages or penalties to a former employee of that predecessor, so long as the successor meets one or more of the specified criteria. The criteria include: 1) if the successor uses “substantially the same facilities or workforce to offer substantially the same services as the predecessor;” 2) shares the same ownership of the business and control of employees; 3) employs any manager who controlled the wages, hours or working conditions of the wronged employees under the predecessor; or 4) is an immediate family member of the

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predecessor's owner, partner, officer, licensee, director, or someone with a financial interest. SB 168 goes into effect on January 1, 2014.

**Increase in California Minimum Wage, AB 10:** AB 20 raises the hourly minimum wage rate in California from \$8 to \$10 an hour by 2016. The wage raise will occur in \$1 steps, with the first, to \$9 per hour taking effect on July 1, 2014, and the second rise, to \$10 an hour, on January 1, 2016. The law will also have a ripple effect on exempt employees. Labor Code section 515 requires exempt employees to receive a salary of at least twice the minimum wage. This means that the minimum salary requirement will rise from \$33,280 per year to \$37,440 per year by July 1, 2014.

**Expansion of Paid Family Leave, SB 770:** SB 770 expands the types of familial relationships covered by California's paid family leave program. Under California law, employees may take unpaid time off to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the child's birth, adoption or foster care placement. That definition will be expanded to include seriously ill grandparents,

grandchildren, siblings, and parent-in-laws. The program is to be funded by mandatory payroll deductions so it should not increase an employer's out-of-pocket expenses. SB 770 goes into effect July 1, 2014.

**Family Friendly Workplace Ordinance, San Francisco City Ord. 130785:** San Francisco Mayor Ed Lee recently signed City Ordinance 130785, effective January 1, 2014, into law. Called the Family Friendly Workplace Ordinance, the new law requires employers with 20 more employees to consider requests by San Francisco-based employees for "flexible or predictable working arrangements to assist with care giving responsibilities." The law protects employees from retaliation for making the request, as well as adverse employment actions based on their caregiver status. The law covers part-time employees as well as full-time employees so long as they have worked for the employer for at least six months. An employer may deny the request for certain business reasons, some examples of which are listed in the law itself.

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Jem Li

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Wood W. Lay

Eric Zion

#### CHICAGO

Derek G. Barella

Susan M. Benton

Shane W. Blackstone

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C. R. Gangemi, Jr.

William G. Miossi

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#### WASHINGTON, D.C.

William G. Miossi