WINSTON & STRAWN LLP

CLIENT ALERT

California Employment Legislative Update

OCTOBER 6, 2016

In the final days of September 2016, California Governor Jerry Brown signed into law various employment bills addressing issues such as restrictions on choice of law and venue in employment agreements, pay equity, notifications and postings, and limitations on criminal background inquiries regarding juvenile court proceedings. The new legislation continues California's trend of increasing employee-friendly laws. A summary of the significant, recently enacted California laws that impact private sector employers follows below. Unless otherwise noted, the following bills are effective January 1, 2017.

Restrictions on Employment Contracts

SB 1241 limits California employers' ability to select choice of law and forum in employment contracts. Specifically, the bill prohibits employers from requiring an employee, who primarily resides and works in California, to agree to a provision, "as a condition of employment," that would (1) require the employee to adjudicate (either through arbitration or litigation) a claim arising in California in an out-of-state forum, or (2) deprive the employee of the substantive protection of California law with respect to a controversy arising in California. SB 1241 applies to all employment contracts required as a condition of employment entered into, modified, or extended on or after January 1, 2017. For more information, see our client briefing on SB 1241 here.

California Minimum Wage

Governor Brown signed **SB 3** in April 2016. SB 3 provides minimum wage increases on an annual basis for almost all California minimum wage workers. For employers with at least 26 employees, the minimum wage will increase to $10.50 per hour in 2017; $11 per hour in 2018; $12 per hour in 2019; $13 per hour in 2020; $14 per hour in 2021; and $15 per hour in 2022. Thereafter, the state director of finance will apply a formula to determine additional annual minimum wage increases based on changes in the Consumer Price Index. For employers of 25 or fewer employees, these same wage increases will go into effect one year later than the effective date for larger employers. See our client briefing covering SB 3, here.

Equal Pay

AB 1676 specifies that, for California's equal pay statute (Labor Code § 1197.5), prior salary cannot, by itself, justify any disparity in compensation for employees that perform substantially similar work.

SB 1063 amends California's equal pay statute to prohibit an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work.

Notifications and Postings

AB 2337 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 that information in writing to new employees upon hire, and to other employees upon request. Employers would not be required to comply with the notice requirement until the Labor Commissioner develops the related materials.

AB 2437 requires that on and after July 1, 2017, a licensed barbering or cosmetology business must post a model notice pertaining to workplace rights and wage and hour laws, developed by the Labor Commissioner, and would require the licensing agency to inspect for compliance of the posting requirement.

AB 1847 amends the Revenue and Taxation Code by requiring some employers who are already required to notify employees who may be eligible for the federal earned income tax credit, to also notify these employees that they may be eligible for the California Earned Income Tax Credit.

AB 2532 repeals the existing unemployment insurance code requirement that community action agencies, or any private organization contracting with a state or local government agency that provides specified employment services, must post a notice stating that only citizens or those persons legally authorized to work in the United Staates may use the agency's or organization's employment services funded by the federal or state government.

Revised PDL and CFRA Notices – Pursuant to the amended California Fair Employment and Housing Act and California Family Rights Act regulations, covered California employers are required to post two amended workplace notices—Pregnancy Disability Leave Notice A: "Your Rights and Obligations as a Pregnant Employee," and California Family Rights Act Notice B: Family Care and Medical Leave and Pregnancy Disability Leave. These new requirements went into effect on April 1, 2016. For more information, see our client briefing here.

Juvenile Court Records

AB 1843 prohibits an employer from asking an applicant for employment 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.The bill also excludes from the Labor Code's definition of "conviction" an 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 a juvenile court. The bill provides certain exceptions for employers at a health facility.

All-Gender Bathroom

AB 1732 requires, beginning March 1, 2017, that all single-user toilet facilities in any business establishment, place of public accommodation, or government buildings be marked as "all-gender" toilet facilities. The bill authorizes those responsible for code enforcement to inspect for compliance with these provisions during any inspection.

Private Sector Retirement Programs

SB 1234 provides approval for the California Secure Choice Retirement Savings Program (SCRSP) and sets forth recommendations and requirements for the design and implementation of that program. SCRSP applies to those private sector employers with five or more employees that do not already offer a sponsored retirement plan.

Agricultural Industry

AB 1066, the "Phase-In Overtime for Agricultural Workers Act of 2016," removes the exemption for agricultural employees regarding overtime hours, meal breaks, and other working conditions, including specified wage requirements. Starting July 1, 2019, the Act also creates a schedule that phases in overtime pay after 40 hours in a week for agricultural workers. Beginning January 1, 2022, the bill requires that any agricultural work performed for over 12 hours in one day be compensated at the rate of no less than twice the employee's regular rate of pay. The bill provides that employers with 25 or fewer employees have an additional three years to comply with the phasing in of these overtime requirements.

SB 836 (the budget bill for 2016) requires that a person seeking to be licensed as a farm labor contractor attest, as part of the initial licensing or license renewal process, that the person's supervisorial employees have been trained at least once for at least two hours each calendar year in the prevention of sexual harassment in the workplace. The measure also requires that all new non-supervisorial employees, including agricultural employees, receive training during the hiring process, and that all non-supervisorial employees, including agricultural employees, receive training at least once every two years in identifying, preventing, and reporting sexual harassment in the workplace. The amended statute also specifies the nature of the required training. The new requirements went into effect on June 27, 2016.

Prevailing/Per Diem Wages

SB 954 requires per diem wages to include industry advancement and collective bargaining agreement (CBA) administrative fees if the payments are made under a CBA to which the employer is obligated. The law excludes from per diem wages, if the payments are not made under a CBA to which the employer is obligated, employer payments related to certain apprenticeship or training programs, worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, and industry advancement, and CBA administrative fees. The measure also prohibits credit for payments for industry advancement and CBA administrative fees if those payments are not made under a CBA to which the employer is obligated.

Clarification of Existing Workers' Compensation Law

AB 2883 clarifies the rules that govern when owners or officers of businesses may exclude themselves from workers' compensation coverage, deletes duplicative sections, and describes how officers and owners of employers can declare that they are not "employees" for purposes of workers' compensation insurance.

Unfair Immigration-Related Practice

SB 1001 makes it unlawful 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. The bill also provides a complaint procedure through the Division of Labor Standards Enforcement (DLSE) and authorizes the Labor Commissioner to institute penalties up to $10,000 against employers violating the new law.

Heat Illness and Injury Prevention Standards

SB 1167 requires the Division of Occupational Safety and Health to propose to the Board, a standard for indoor workers that minimizes heat-related illnesses and injuries by January 1, 2019.

Domestic Worker Bill of Rights

SB 1015 deletes the January 1, 2017 repeal date of the Domestic Worker Bill of Rights, making current overtime protections permanent. California domestic workers will continue to receive overtime pay.

Paid Family Leave

AB 908, signed last April, will increase employee benefits for employees covered by State Disability Insurance. Employees who make more than 33 percent of the California average weekly wage will receive 60 percent benefits. Employees who make less than 33 percent of the average weekly wage will see increases of up to 70 percent. Expanded benefit levels will go into effect on January 1, 2018. See our client briefing here.

Janitorial Industry Reform

AB 1978 expands employer requirements to cover about 220,000 employees in the janitorial industry. The bill requires every janitorial employer covered by the law to keep accurate records of specific information regarding employees for three years. The bill requires the DLSE to enforce its provisions and would authorize the Labor Commissioner to adopt regulations to carry out the law. The bill requires every janitorial employer, effective July 1, 2018, to register annually with the Labor Commissioner. The bill also prohibits a janitorial employer from conducting any business without registration as required by the bill, and would authorize the Commissioner to revoke a registration under certain circumstances. The bill requires the Commissioner to maintain a public database of registered property service employers. By January 1, 2019, the DLSE is required to mandate sexual violence and harassment prevention training requirement for employees and employers in the industry. The bill also requires employers, from July 1, 2018 until January 2019, to provide employees with the DFEH pamphlet on sexual harassment. The bill establishes civil fines for specific violations of its provisions and gives the Labor Commission authority to enforce the civil fine provisions.

Employment Discrimination

AB 488 authorizes workers in a nonprofit sheltered workshop or rehabilitation facility to sue under FEHA for prohibited harassment or discrimination.

AB 1687 sponsored by the Screen Actors Guild, creates restrictions as to what information online entertainment employment service providers may disclose about a subscriber's age and how a subscriber may request to have such information removed from online databases.

Apprenticeship

AB 1926 requires, when a contractor requests the dispatch of an apprentice to perform work on a public works project, that the apprentice be paid the prevailing rate for the time spent on any mandated pre-employment activity, including travel time to and from the activity, if any, except as specified in the bill.

AB 2288 ensures that federal Workforce Innovation and Opportunity Act of 2014 funds awarded for pre-apprenticeship training (1) follow the Multi-Craft Core Curriculum implemented by the State Department of Education, and (2) develop a plan for outreach and retention for women participants to help increase the representation of women in the building and construction trades.

Arbitration

SB 1007 provides that a party to an arbitration proceeding shall have the right to have a court reporter during the arbitration proceeding.

Commuter Benefits

SB 1128 authorizes the Bay Area Air Quality Management District and the Metropolitan Transportation Commission to jointly continue the Bay Area Commuter Benefits Program, a program that requires employers with 50 or more full-time employees in the Bay Area to offer commuter benefits to their employees. Employers subject to the program are required by law to register via the program website, select a commuter benefit, and offer their program to their employees.

The text and legislative history of each bill is available here.

California employers should ensure policies and practices are updated, as needed, to ensure compliance with all new legislation.

9 Min Read

Related Locations

Charlotte | Chicago | Houston | Los Angeles | New York | Paris | San Francisco | Silicon Valley | Washington, DC

Related Topics

Employment and Labor Law | California | Legislative Update

Related Capabilities

Labor & Employment

Related Regions

North America

Related Professionals

Derek G. Barella

Shane Blackstone

Joan Fife

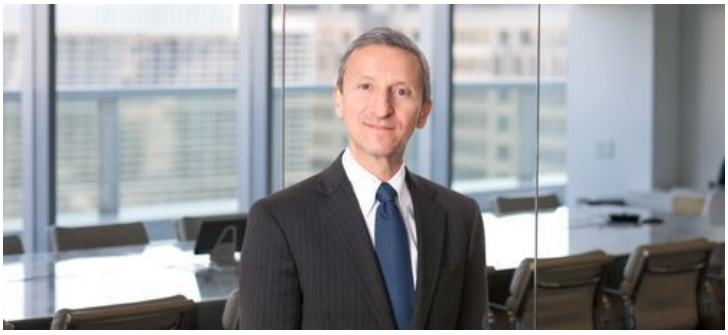
Aviva Grumet-Morris

Deborah S.K. Jagoda

Scott Landau

Laura Petroff

Michael Roche



Stephen Sheinfeld

Cardelle Spangler

William Sunkel

Emilie Woodhead