

CLIENT ALERT

## Recent California Employment Legislation – Status Update

OCTOBER 16, 2015

As we detailed in our recent [California Legislative Update](#), the California legislature passed a number of employment-related bills in the final few weeks of its term. Since our last briefing, Governor Brown has acted upon the following measures.

### **Bills Passed Into Law**

#### **AB 621 – Motor Carrier Employer Amnesty Program**

Governor Brown signed this bill on October 10. This bill provides amnesty to trucking companies for misclassifying commercial drivers as independent contractors if they enter into a settlement with the Labor Commissioner prior to January 1, 2017; agree to convert the drivers to employees; and pay all wages, benefits, and taxes owed. This bill takes effect January 1, 2016.

#### **AB 622 – E-Verify System**

Governor Brown signed this bill on October 9. This bill expands the definition of “unlawful employment practice” under existing laws to prohibit an employer or any other person from using the E-Verify system for any purpose other than to check the status of an existing employee or an applicant who has not yet received an offer of employment. This bill takes effect January 1, 2016.

#### **AB 897 – Grocery Workers**

Governor Brown signed this bill on September 21. This bill requires successor grocery store employers to hire from existing grocery store workers during the 90-day transition period after an acquisition. This bill takes effect January 1, 2016.

## **AB 970 – Enforcement of Employee Claims**

Governor Brown signed this bill on October 11. This bill expands the Labor Commissioner's existing authority to investigate and to enforce local wage laws in cities and counties, by allowing it to issue citations and penalties for violations of local overtime and minimum wage provisions. This bill takes effect January 1, 2016.

## **AB 1506 – PAGA Violations Cure**

Governor Brown signed this bill on October 2. This bill amends California's Private Attorney General Act (PAGA) to provide employers with an opportunity to cure a violation of certain portions of the wage payment law relating to wage statements before the employee may bring a civil action. This bill is now in effect. For more details, see our client briefing summarizing this bill by clicking [here](#).

## **AB 1513 – Piece-rate Compensation**

Governor Brown signed this bill on October 10. This bill adds a new provision to the wage payment law, California Labor Code 226.2, that will require employers—compensating employees based on piece-rate and activity-based formulas, as is historically done in agricultural and transportation companies—to pay workers for rest and recovery periods and other “nonproductive time” at or above minimum hourly rates, separate from piece-rate compensation. In addition to other requirements, employers will now need to include the following in wage statements: the total hours of compensable rest and recovery periods and other nonproductive time; the rate of compensation for those periods; and the gross wages paid for those periods during the pay period. The bill takes effect January 1, 2016. Employers who have employees in California paid on any productivity or piece-rate basis should review the statute carefully, available [here](#), and consult with counsel to be sure they comply with all requirements, as the timeframes for coming into compliance and taking advantage of possible safe harbor provisions are limited.

## **SB 327 – Health care Employee Meal Period Waivers**

Governor Brown signed this bill on October 5. This bill clarifies the validity of health care employee meal period waiver provisions in Industrial Welfare Commission (IWC) wage orders. This bill took effect immediately upon enactment. For more details, see our client briefing [here](#).

## **SB 358 – Conditions of Employment: Gender Wage Differential**

Governor Brown signed this bill on October 6. This bill prohibits employers from paying any employee less than an opposite sex employee for “substantially similar” work. The Fair Pay Act takes effect January 1, 2016. For more details, see our client briefing summarizing this Act by clicking [here](#).

## **SB 588 – Nonpayment of Wages: Labor Commissioner: Judgment Enforcement**

Governor Brown signed this bill on October 11. This bill enacts special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in California. This bill takes effect January 1, 2016. For more details, see our client briefing summarizing this Act by clicking [here](#).

## **SB 703 – Public Contracts: Prohibitions: Discrimination**

Governor Brown signed this bill on October 7. This bill will prohibit state agencies from entering into contracts with vendors for \$100,000 or more who have employee health plans that discriminate on the basis of gender identity. This bill takes effect January 1, 2016.

## Bills Vetoed by Governor Brown

### AB 465 – Contracts Against Public Policy

Governor Brown returned this bill without his signature on October 11. This bill would have enjoined employers from asking employees to sign arbitration agreements as a condition of employment, unless an employee is individually represented by legal counsel. In vetoing the bill, Governor Brown stated that any arbitration abuses should be addressed by targeted legislation and not a blanket prohibition. Governor Brown also acknowledged that both the California and U.S. Supreme Courts have found blanket bans to “unduly impede arbitration” and to violate the Federal Arbitration Act.

### AB 676 – Employment Discrimination for Unemployed Status

Governor Brown returned this bill without his signature on October 10. This bill would have prohibited employers from publishing advertisements or job announcements that indicate that an unemployed person is not eligible for the job, and would prohibit employers from asking applicants to disclose their employment status. Governor Brown stated that the bill was substantially similar to a version of the bill he vetoed in 2014.

### AB 1017 – Salary History

Governor Brown returned this bill without his signature on October 11. This bill would have prohibited employers from seeking an applicant’s salary history for the purpose of setting the applicant’s pay at the new position. In vetoing the bill, Governor Brown stated that the bill’s prohibitions were overbroad given the little evidence that the prohibitions would assure more equitable wages. Furthermore, the Governor stated that the bill may not be necessary given the recent enactment of SB 358, the California Fair Pay Act.

### SB 406 – Expansions to the California Family Rights Act

Governor Brown returned this bill without his signature on October 11. This bill would have expanded the definition of “child” and the circumstances for taking leave under the California Family Rights Act (CFRA). In his veto message, Governor Brown stated that these expansions would create too great a disparity between the CFRA and the Federal Family and Medical Leave Act. In particular, the proposed bill could require an employer to provide an employee up to 24 weeks of family leave in a 12-month period.

The vetoed bills will return to their house of origin where they may be reconsidered for a 60-day period. If during that time, two-thirds of the membership of both the California Assembly and Senate vote to enact the vetoed bill, the veto is overridden and the legislation will become law.

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