

CALIFORNIA EDITION

Trends & Change

EMPLOYMENT & LABOR NEWS & INSIGHTS

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Newly Enacted Statutes

The following is a brief recap of the bills Governor Brown signed in 2016 that have added new laws to the books and modified existing laws affecting California employers. Employers should consult with counsel to ensure relevant policies and procedures are updated and for advice on compliance issues.

CALIFORNIA EMPLOYEES' RIGHT TO CALIFORNIA CHOICE OF LAW AND FORUM (SB 1241)

Effective January 1, 2017, this bill added section 925 to the Labor Code to prohibit employers from requiring employees who primarily live and work in California to agree, as a condition of employment, to any contractual provision that would (1) require the employee to adjudicate outside of the state, whether in court or arbitration, a claim arising in California or (2) deprive the employee of the protection of California law with respect to a controversy arising in California. Any provision of a contract that violates these prohibitions is voidable upon request of the employee, and any dispute over the voided provision is to be adjudicated in California under California law. In addition to injunctive relief, section 925 authorizes a court to award reasonable attorney's fees. The newly enacted section 925 applies to employment contracts entered into, modified or extended on or after January 1, 2017. However, this section does not apply where the employee is represented by legal counsel in relation to the formation of the agreement.

ALL-GENDER RESTROOM ACCESS (AB1732)

Effective March 1, 2017, single-user toilet facilities in any business establishment, place of public accommodation or government agency must be identified as all-gender facilities, rather than designated as male or female. This new law authorizes inspectors, building officials or other local officials responsible for code enforcement to inspect for compliance with these provisions during any inspection.



Contributors



Diana M. Estrada
Partner | co-editor
Los Angeles
213.330.8848
diana.estrada@wilsonelser.com



Jacqueline J. Harding
Partner | co-editor
Los Angeles
213.330.8976

jacqueline.harding@wilsonelser.com

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JUVENILE CRIMINAL HISTORY (AB 1843)

This bill has expanded Labor Code section 432.7 restrictions on employer inquiries into criminal history involving juvenile criminal history. Specifically, the newly added language prohibits employers from asking job applicants to disclose information or to use information as a factor in determining conditions of employment regarding 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. For the purposes of the prohibitions and exceptions, the expansion of section 432.7 provides that “conviction” excludes adjudication by a juvenile court or any other court order or action taken with respect to a



person who is under the jurisdiction of the juvenile court law, and makes related and conforming changes. While the expanded law provides certain exceptions for health facilities, it requires health facility employers seeking disclosure of juvenile offense history to provide the applicant with a list describing offenses for which disclosure is sought. This change went into effect January 1, 2017.

WAGE STATEMENTS FOR EXEMPT EMPLOYEES (AB 2535)

This bill has added language to Labor Code section 226, providing that an itemized wage statement for certain exempt employees need not show an employee's total hours worked. This newly added language applies to:

- Employees who fall under the executive, managerial, professional, outside sales, or computer software professional, paid on a salary basis

- Individuals who are the parent, spouse, child or legally adopted child of the employer provided in any applicable order of the Industrial Welfare Commission
- Participants, directors and staff of a live-in alternative to an incarceration rehabilitation program for substance abuse
- Exempt crew members of licensed commercial passenger fishing boats
- Participants in national service programs.

These changes became effective January 1, 2017.

MINIMUM WAGE VIOLATION BOND (AB 2899)

Effective January 1, 2017, this bill requires that an employer seeking a writ of mandate contesting a Labor Commissioner's ruling regarding failure to pay minimum wages must first post a bond with the Labor Commissioner in an amount equal to the unpaid wages assessed. The money will be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.

DOMESTIC WORKER BILL OF RIGHTS EXTENDED (SB 3)

This bill will allow the Domestic Worker Bill of Rights to remain law beyond January 1, 2017, the date it had been scheduled to be repealed. Accordingly, this law will continue to regulate the hours of work of domestic worker employees who are personal attendants, and provide an overtime compensation rate for those employees.

EQUAL PAY ACT AMENDED (SB 1063)

California's Equal Pay Act protections were expanded by amending Labor Code section 1197.5 to include race and ethnicity. Accordingly, it will now be unlawful to pay employees less than the amount paid to employees of another race or ethnicity for “substantially similar work.” Additionally, AB 1676 amended section 1197.5 to specify that prior salary cannot, by itself, justify any disparity in compensation under the bona fide factor exception to the above prohibition. This change went into effect January 1, 2017.

HEALTHY WORKPLACES AND HEALTH FAMILY ACT EXPANDED TO INCLUDE IN-HOME SUPPORTIVE WORKERS (SB 3)

On and after July 1, 2018, providers of in-home supportive services who work in California for 30 or more days within a year from the commencement of employment will be entitled to paid sick days, subject to specified full amount of leave time amounts and that rate of accrual. The bill would require the State Department of Social Services, in consultation with stakeholders, to convene a workgroup to implement paid sick leave for in-home supportive services providers and to issue guidance in that regard by December 1, 2017. The bill would authorize the Department to implement such paid sick leave without complying with the Administrative Procedure Act.

MINIMUM WAGE INCREASES

In addition to the various increases in counties and municipalities, the state minimum wage increased to \$10.50 per hour as of January 1, 2017, for employers who employ 26 or more employees. The state minimum wage will thereafter increase by \$1.00 every year up to \$15.00 per hour as of January 1, 2022.

EARNED INCOME TAX CREDIT DISCLOSURE (AB 1847)

Under existing law, the Earned Income Tax Credit Information Act requires an employer, as defined, to notify all employees that they may be eligible for the federal earned income tax credit, as specified. This bill requires those same employers currently 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 under the same conditions.

CALIFORNIA STATE CONTRACTOR REQUIREMENTS (AB 2844)

This bill requires that a contractor who submits a bid or proposal to enter into or renew contact with a state agency for a contract in the amount of \$100,000 or more to certify at the time the bid is submitted or

the renewal is proposed that it is in compliance with the Unruh Civil Rights Act and the California Fair Employment and Housing Act (FEHA). In addition, a contractor must certify that any policy it has adopted against a sovereign nation or peoples recognized by the United States government is not used to discriminate in violation of the Unruh Civil Rights Act and the FEHA.

IMMIGRATION-RELATED PROTECTIONS (SB 1001)

This bill prohibits an employer from (1) requesting more or different documents than are required under federal immigration law, (2) refusing to honor documents tendered that on their face reasonably appear to be genuine, (3) refusing to honor documents or work authorizations based on a person's status, or (4) re-investigating or re-verifying an incumbent employee's authorization to work. This is effective as of January 1, 2017.

RESTRICTIONS ON AGE DISCLOSURE FOR ACTORS (AB 1687)

Effective January 1, 2017, this bill added section 1798.83.5 to the Civil Code to prohibit a commercial on-line entertainment employment service provider that enters into a contractual agreement to provide specific employment services to a paid subscriber from publishing information about the subscriber's age in an online profile of the subscriber. The provider also is required to remove from public view certain information regarding the subscriber's age on any companion internet website under the provider's control if requested by the subscriber.

DFEH TO RECEIVE AND PROSECUTE HUMAN TRAFFICKING COMPLAINTS (AB 1684)

Under AB 1684, the Department of Fair Employment and Housing (DFEH) can receive complaints from victims of human trafficking. The agency also is authorized to investigate, prosecute, mediate, conciliate and bring civil actions on behalf of such victims.

PAID FAMILY LEAVE BENEFITS (AB 908)

Beginning January 1, 2018, the amount of paid family leave benefits increases from 55 percent of earnings to 60 or 70 percent of earnings, depending on the employee's income. In addition, this bill eliminates the seven-day waiting period to receive benefits.

NOTICE REQUIREMENTS ABOUT DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING PROTECTIONS (AB 2337)

Existing law prohibits employers from terminating or discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault or stalking for taking time off from work for the purpose of addressing the domestic violence, assault or stalking. Effective July 1, 2017, this bill requires that employers with 25 or more employees give notice to employees of their rights under existing laws by providing information in writing to new employees upon hire and to other employees upon request.

ADDITIONAL RESTRICTIONS ON WORKPLACE SMOKING (ABX2-7)

This bill expands the prohibition on workplace smoking by amending Labor Code section 6404.5 to include an owner-operated business. In addition, it eliminates most exemptions that permitted smoking in work environments such as hotel lobbies, bars and taverns, warehouse facilities and employee break rooms. This change became effective June 9, 2016.

FURTHER HEAT ILLNESS REGULATIONS MANDATED (SB 1162)

By January 1, 2019, the Division of Occupational Safety and Health must propose to the Occupational Safety and Health Standards Board a heat illness and injury prevention standard applicable to workers in indoor workplaces.

SMARTPHONE USAGE WHILE DRIVING (AB 1785)

Effective January 1, 2017, a handheld wireless telephone or other wireless communications device may be operated using the driver's hand while the driver is operating the vehicles if (1) the handheld telephone or wireless device is mounted on the vehicle's windshield in the same manner as a GPS is mounted or affixed to a vehicle's dashboard or center console so as not to interfere with the driver's view of the road and (2) the driver's hand is used to activate and deactivate the cellphone or wireless device with the motion of a single swipe or tap of the driver's finger.

SETTLEMENT PROVISIONS LIMITING DISCLOSURE OF SEX OFFENSES ARE PROHIBITED (AB 1682)

Under this bill, any settlement provision entered into on or after January 1, 2017, that prevents the disclosure of information regarding a felony sex offense, child sexual abuse, sexual exploitation of a minor, or sexual assault against an elder or dependent adult is void as a matter of law and against public policy. An attorney's failure to comply with these requirements by demanding that such a provision be placed in a settlement agreement may be subject to professional discipline by the State Bar of California.

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