



Law and Management Resource Center

NEW CALIFORNIA WORKPLACE LAWS EFFECTIVE IN 2017

The California State Legislature has enacted several employer-employee related laws that have been signed into law by Governor Brown and will go into effect in 2017. Below is a summary of the key workplace related laws. Assembly Bills are referenced as “AB”; Senate Bills are referenced as “SB.”

WAGE DISCRIMINATION (AB 1676 and SB 1063) – Effective January 1, 2017

These laws amend and expand the Fair Pay Act which took effect in 2016. Under the Fair Pay Act, employers are prohibited from paying employees wages that are less than the rates paid to other employees of the opposite sex for equal work in positions performed under similar working conditions in which the performance requires equal skill, effort and responsibility. The Fair Pay Act contains certain exceptions which allow for a wage differential based on a seniority system, merit system, system that measures earnings by quantity and/or quality of production or bona fide factor other than the sex of the employee such as education, training or experience. AB 1676 amends the Fair Pay Act by mandating that an employee’s prior salary shall not by itself be used to justify a wage differential under the bona fide factor exception of the Fair Pay Act. SB 1063 amends the Fair Pay Act by expanding the equal pay protections and requirements of the Fair Pay Act to include an employee’s race or ethnicity, rather than only the gender of the employee.

SINGLE-OCCUPANCY RESTROOMS (AB 1732) – Effective March 1, 2017

This law requires employers to identify single-user (single occupant) restroom toilet facilities located in their business establishments with “all gender” signage rather than “male” or “female.” A single-user restroom is defined for purposes of this law as “a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user.” This new law applies to all business establishments, places of public accommodation and government agencies. It also authorizes inspectors, building officials and other officials responsible for code enforcement to inspect for compliance.

DOMESTIC VIOLENCE LEAVE (AB 2337) – Effective January 1, 2017

This legislation applies to employers with 25 or more employees. It requires that such employers provide written notice to all new employees upon hire, and all current employees upon their request, of the rights to take time off from work and accommodation pursuant to California Labor Code Sections 230 and 230.1. Labor Code Sections 230 and 230.1 provide protection to victims of domestic violence, sexual assault and stalking. AB 2337 mandates that the Labor Commissioner develop a model notice form on or before July 1, 2017. Note: Employers are not required to comply with this new law until the model notice form that is to be developed by the Labor Commissioner is available for employers to use.

MINIMUM WAGE VIOLATIONS (AB 2899) – Effective January 1, 2017

This legislation, which amends Labor Code Section 1197.1, pertains to appeals of rulings of the Labor Commissioner wherein an employer has been held liable for violating wage and hour laws. Pursuant to this new law, prior to an employer filing an appeal, the employer is required to post a bond with the Labor Commissioner in an amount equal to the determined unpaid wages, as well as any overtime and liquidated damages excluding penalties assessed by the Labor Commissioner against the employer. The bond must be in favor of the employee and will be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of a hearing.

CRIMINAL HISTORY (AB 1843) – Effective January 1, 2017

This legislation amends Labor Code Section 432.7. Pursuant to this legislation, employers are prohibited from asking an applicant to disclose, seeking from any source or utilizing as a factor in determining a condition of employment any information concerning or related to an arrest, detention, processing, diversion, adjudication or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. An exemption is provided for health facility employers, however. These employers are permitted to inquire into an applicant's juvenile criminal record if a juvenile court's final ruling has concluded that the person committed a felony or misdemeanor involving certain crimes related to sex and/or controlled substances within five years prior to the employment application.

It should be noted that employers are prohibited from making inquiries regarding sealed juvenile criminal records and employers of health facilities seeking information under the exception must provide an applicant with a list describing offenses for which disclosure is sought.

CHOICE OF LAW AND FORUM IN AGREEMENTS (SB 1241) – Effective January 1, 2017

This legislation, which establishes Labor Code Section 925, pertains to choice of law and forum requirements contained in employment agreements, including arbitration agreements, entered into between California-based employers and their employees. Per this legislation, California-based employers are prohibited from requiring an employee to adjudicate a claim arising in California in a forum outside of California or litigate a claim under the law of another jurisdiction unless the employee was represented by counsel. Contract provisions that violate this law are voidable by employees and disputes arising out of such contracts shall be adjudicated in California under California law. The law also provides that employees are entitled to recover reasonable attorneys' fees.

UNFAIR IMMIGRATION PRACTICES (SB 1001) – Effective January 1, 2017

Under this legislation, which establishes new Labor Code Section 1019.1, an employer can be held to have committed an unfair immigration-related practice if the employer has conducted any of the following practices in the course of verifying a worker's authorization to work in the United States:

- a.) a request for more or different documentation than required under federal law to verify authorization to work pursuant to the I-9 process;
- b.) a refusal to honor a document provided by an individual that on its face appears reasonably genuine;
- c.) a refusal to honor documentation or work authorization based on the specific status or term that accompanies the work authorization; or
- d.) an attempt to reinvestigate or reverify a current employee's work authorization using an unfair immigration-related practice.

Penalties of up to \$10,000 can be enforced against an employer that violates this law.

EXEMPT EMPLOYEE ITEMIZED WAGE STATEMENTS (AB 2535) – Effective January 1, 2017

This legislation clarifies the requirements of Labor Code Section 226, which requires that employers provide written itemized wage statements to employees, by making it clear that Labor Code Section 226 does not require employers to include the total number of hours worked in itemized wage statements provided to exempt employees. This law pertains to wage statements provided to employees classified as exempt under the executive, managerial, professional, outside sales and salary compensated computer software professional exemptions.