

2018 California Employee Law Update

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Today's Topics

- “Ban the Box” Legislation for all California Employers
- Applicant Salary History
- Parent Leave Act
- Immigration Enforcement
- Gender Identity and Sexual Orientation / Harassment Training
- Human Trafficking
- Construction Contractors
- DLSE Enforcement Actions
- Workers’ Compensation Medical Treatment / Terrorists Attacks
- #MeToo Posts
- Employers E-filing with EDD
- California Minimum Wage Increases

All laws in effect January 1, 2018, unless noted otherwise.

JOB APPLICATION

☐ Have you ever been convicted
of a criminal offense?

Ban the BOX

**“Ban the Box” Legislation – all
California Employers**

“BAN THE BOX” LEGISLATION

- Employers with 5 or more employees are prohibited from inquiring an applicant’s conviction history before a conditional job offer is made. It is unlawful to:
 1. Include on any employment application questions regarding the applicant’s conviction history
 2. Inquire or consider the conviction history of the applicant until after you have made a conditional offer of employment
 3. Consider, distribute or disseminate information about any of the following, while conducting a conviction history background check of an applicant:
 - An arrest not followed by conviction
 - Referral to or participation in a pretrial or post trial diversion program
 - Convictions that have been sealed, dismissed, expunged or statutorily eradicated

“BAN THE BOX” LEGISLATION (contd.)

- 4. Cannot interfere with, restrain or deny someone from exercising or attempting to exercise these rights
- Requires an individualized assessment if determination is made to withdraw job offer solely or in part because of applicant's conviction history
- You must assess whether applicant's conviction history has a direct and adverse relationship with specific duties of job that justify denying applicant the position, considering:
 - Nature and gravity of the offense or conduct
 - Time that has passed since the offense or conduct and completion of the sentence
 - The nature of the job held or sought

“BAN THE BOX” LEGISLATION (contd.)

- You must provide applicant written notification of the decision with specified information
- Applicant is allowed 5 business days to respond to that notification before you can make a final decision
- If disputed in writing, applicant has an additional 5 business days to respond to the notice with evidence to support that assertion
- You must notify the applicant, in writing, of your final decision

WHAT YOU NEED TO DO

- ☐ Update employment application
- ☐ Update (or create) hiring procedures
- ☐ Train hiring managers/supervisors
- ☐ Create assessment process for applicants with convictions (how to determine whether that criminal history has a direct and adverse effect on the specific duties of the job offered)
- ☐ Adjust above for your Los Angeles locations (Los Angeles Fair Chance Hiring Ordinance)



APPLICANT SALARY HISTORY

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- Amends California Equal Pay Act
- Prohibits employers from inquiring applicant salary history or information to determine job offer or what to pay
- Prohibits employers from seeking such info orally, in writing, personally or through a manager or third party (e.g., recruiting agency)
- Salary information includes compensation and benefits (undefined)
- Employers required, upon reasonable request, to provide the pay scale for a position to an applicant

APPLICANT SALARY HISTORY (contd.)

- Does not prohibit applicant from voluntarily (and without prompting) disclosing salary history information
- Does not prohibit employer from considering or relying on voluntarily disclosed salary info in determining salary
- Caution should be used when making decisions with such information

WHAT YOU NEED TO DO

- ☐ Update employment application and hiring procedures
- ☐ Establish wage ranges for each position to make available upon request
- ☐ Train hiring managers on proper interviewing practices including appropriate questions, how to address voluntary provided information, etc.
- ☐ Consider a form for applicants to sign documenting voluntary and unsolicited disclosure of salary information



PARENT LEAVE ACT

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- An expansion of CFRA
- Impacts employers with 20 or more employees
- Provides up to 12 weeks of unpaid, job-protected “baby bonding” leave for mothers and fathers
- Use for bonding with a new child within one year of the child’s birth, adoption or foster care placement
- Employee eligibility:
 - Worked for employer at least one year
 - Worked 1,250 hours in the year
 - Works at location with at least 20 employees within 75 miles

PARENT LEAVE ACT (contd.)

- Guarantees employee will be reinstated to same or comparable position at end of leave
- Employee may use accrued vacation pay, paid sick leave or other accrued paid time off
- Group health insurance must be maintained at same level and conditions
- In addition to Pregnancy Disability Leave for female employees
- Not required to grant to parents simultaneously when both are employed by you; leave may be shared to equal the 12-week maximum

WHAT YOU NEED TO DO

- ☐ Update your leave of absence policies, procedures and time off request forms
- ☐ Update your Employee Handbook
- ☐ Educate managers on employee eligibility for time off



IMMIGRATION ENFORCEMENT

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- Employers cannot allow Immigration and Customs Enforcement (ICE) agents to enter non-public areas of the workplace
- Exception when a federal subpoena or warrant allows such or to access, review or obtain employee records
- Inspection of I-9 records not included when employer receives such notice; compliance required
- Template workplace notice soon to be available at DOL website

WHAT YOU NEED TO DO

- ☐ Review I-9 procedures to ensure you are compliant
- ☐ Caution in re-verifying employees you may suspect of having illegal documentation
- ☐ Communicate with management team on how to address unplanned/unannounced visit from ICE



Gender Identity and Sexual Orientation Harassment Training

GENDER IDENTITY/SEXUAL ORIENTATION HARASSMENT TRAINING

- Training already required for employers with 50+ employees
- New law requires additional training on gender identity, gender expression and sexual orientation harassment
- Employers with 5+ employees must post DFEH transgender rights workplace notice

WHAT YOU NEED TO DO

- ☐ Update your harassment training to include gender identity, gender expression and sexual orientation
- ☐ If 50+ employees, check schedule for next training
- ☐ Update harassment policies and procedures
- ☐ Update your Employee Handbook
- ☐ Post the DFEH posting by January 1, 2018



Human Trafficking

HUMAN TRAFFICKING

- Current law requires certain businesses to post notice regarding human trafficking:
 - Alcohol Beverage Control Act licensees that sell alcoholic beverages for on-site public consumption (taverns, saloons, night clubs or similar establishments); adult or sexually oriented businesses; primary airports; intercity passenger rail or light rail stations; bus stations; truck stops; emergency rooms within general acute care hospitals; urgent care centers; farm labor contractors; privately operated job recruitment centers; roadside rest areas; and businesses or establishments that offer massage or bodywork services for compensation
- New law requires additional businesses to post notice and available hotlines, including hotels, motels and bed and breakfast inns



Construction Contractors

CONSTRUCTION CONTRACTORS

- Impacts direct contractor making/taking a contract in California
- Applies to construction, alteration or repair of building, structure or other private work
- Contractor is liable for any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor
- Applies to any tier acting under, by or for the direct contractor for the wage claimant's performance of labor of the contract between the direct contractor and the owner
- Direct contractor's liability extends only to unpaid wage, fringe or other benefit payment or contribution
- Includes interest owed; does not extend to penalties or liquidated damages

WHAT YOU NEED TO DO

- ❑ Perform due diligence on any subcontractor before entering into a contract to ensure pay practices and financial stability



DLSE Enforcement Actions

DLSE ENFORCEMENT ACTIONS

- Authorizes DLSE investigation of an employer – with or without a filed complaint – when retaliation or discrimination is suspected during a wage claim or other investigation conducted by Labor Commissioner
- Employers willfully refusing to comply are subject to penalty of \$100/day each day of non-compliance with court order, up to \$20,000 maximum

WHAT YOU NEED TO DO

- ❑ Use caution when employees complain about pay; involuntary terminations following such a complaint could potentially lead to claim of retaliation based on employee protected whistleblower status



WORKERS' COMPENSATION

Medical Treatment: Terrorist Attacks; Workplace Violence

WORKERS' COMP – WORKPLACE VIOLENCE

- Requires employers to provide immediate support from a nurse case manager to employees injured during employment by act of domestic terrorism
- Requires employer-appointed nurse case manager to assist claimants to obtain medically necessary medical treatments and provide a prescribed notice to claimants
- Provisions applicable only if Governor declares state of emergency in connection with act of domestic terrorism

WHAT YOU NEED TO DO

- ❑ Review your Safety Plan (IIPP) to ensure you have policies and procedures in place and people assigned to address such emergencies



#MeToo posts

#MeToo Posts

- Latest #MeToo social media campaign and harassment allegations alert employers to possible issues in their own businesses
- Employer blogs, Facebook accounts or where employees are “friends” on social media may contain #MeToo posts by employees

WHAT YOU NEED TO DO

- ☐ Don't search for such employee posts
- ☐ If made aware of employee post, act on it as if it was a regular complaint



MISCELLANEOUS

EMPLOYERS E-FILING WITH EDD

- Employers of all sizes required to electronically submit employment tax returns, wage reports and payroll tax deposits to EDD starting January 1, 2018

CALIFORNIA MINIMUM WAGE INCREASES

- Companies with 25 employees or less – \$10.50/hour
- Companies with 26 or more employees – \$11.00/hour
- Exempt employees (executive, professional, administration, etc. classifications):
 - At least twice California State minimum wage = \$880/week, \$3813/month or \$45,760/year

COMPUTER PROFESSIONAL EXEMPTION

2018 wage minimums:

- Hourly rate of pay = \$43.58/hour
- Monthly salary = \$7,565.85
- Annual salary = \$90,790.07

IRS MILEAGE RATE

- No IRS changes posted to date on standard mileage rates for the use of a car (also vans, pickups or panel trucks)
- 2017 rates:
 - 53.5 cents per mile for business miles driven
 - 17 cents per mile driven for medical or moving purposes
 - 14 cents per mile driven in service of charitable organizations

Final Questions?



***Thank You
For Joining Us!***

