

October 5, 2016

New California Employment Laws for 2017 – And How to Get Ready

The 2015-16 California legislative session has come to a close, and of the hundreds of bills Governor Brown has signed, there are a number of important measures that will impact employers. Here is an overview of new workplace-related laws, organized by bill number. Unless otherwise specified, these laws take effect on January 1, 2017.

- **Increased paid family leave and state disability benefits (AB 908):** Effective January 1, 2018, state Paid Family Leave (PFL) and State Disability Insurance (SDI) wage-replacement benefits will increase to 60 or 70 percent of a participant's wages (from the current level of 55 percent), depending on income level and up to the statutory cap. In addition, the current seven-day waiting period for PFL benefits will be eliminated as of January 1, 2018. PFL benefits, which are wholly funded by employee contributions, provide up to six weeks of wage-replacement benefits for bonding with a new child or to care for an ill family member.
- **Overtime for agricultural workers (AB 1066):** The Phase-In Overtime for Agricultural Workers Act will create new overtime protections for workers engaged in agricultural occupations (covered by IWC Wage Order 14-2001), who currently are eligible for overtime pay only after 10 hours in a work day or 60 hours in a work week. The phase-in will begin in 2019 and will gradually decrease the daily and weekly hours that an agricultural worker must work to receive overtime pay, to eight hours in a work day and 40 hours in a work week by 2022.
- **Background checks by “transportation network companies” (AB 1289):** Transportation network companies – that is, a company such as Uber or Lyft that provides an online platform to connect passengers with drivers using their personal vehicles – will be required to conduct or have a third party conduct local and national criminal background checks on each participating driver. In addition, a transportation network company would be barred from contracting with or retaining a driver who is currently registered on the U.S. Department of Justice's National Sex Offender Public Website, has been convicted of certain terrorism-related or violent felonies or, within the past seven years, has been convicted of misdemeanor assault or battery, domestic violence, or driving under the influence.

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- **Salary history (AB 1676):** In January 2016, the California Fair Pay Act became law, creating new gender pay equity protections under Labor Code section 1197.5. This bill expands the Fair Pay Act (also see SB 1063, below) to specify that an individual's prior salary cannot, by itself, justify a wage differential.
- **Removal of age from actors' online profiles (AB 1687):** This measure provides that a commercial online entertainment employment service provider – such as IMDb – that enters into a contract to provide employment services to an individual for a subscription payment shall not, upon the individual's request, publish his or her date of birth or age information in an online profile or share such information with any websites for the purpose of publication. A commercial online entertainment employment service provider is a person or business that owns, licenses, or possesses computerized information about individuals employed in the entertainment industry, including television, films, and video games, and that makes the information available to the public or potential employers.
- **Single-user restrooms must be "all gender" (AB 1732):** Effective March 1, 2017, single-occupancy restroom facilities in any business establishment must be identified with signage as "all gender" facilities, rather than designated as male or female. A single-user restroom is a toilet facility with no more than one water closet and one urinal with a locking mechanism that is controlled by the user.
- **Juvenile criminal history (AB 1843):** Labor Code section 432.7 restrictions on inquiries regarding criminal history have been expanded to prohibit asking an applicant to disclose juvenile convictions. Additionally, an employer may not: (1) ask an applicant to disclose information 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; or (2) seek from any source or utilize as a factor in determining any condition of employment any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law. The bill makes a narrow exception for employers at a health facility to permit inquiry into an applicant's juvenile criminal background if a juvenile court made a final ruling or adjudication that the applicant had committed a felony or misdemeanor relating to certain sex or controlled substances crimes within five years preceding the

employment application, although inquiries regarding sealed juvenile criminal records are prohibited. An employer at a health facility seeking disclosure of juvenile offense history under this exception will be required to provide the applicant with a list describing offenses for which disclosure is sought.

- **Work experience education programs (AB 2063):** This bill expands the opportunity to participate in a work experience education program for credit to students at least 14 years old (previously this only applied to students at least 16 years old). Also, students may now participate in a job shadowing experience for up to 40 hours (rather than the current 25 hours) if the school principal certifies that it is necessary for the pupil's participation in a career technical education program.
- **DLSE enforcement authority (AB 2261):** The Department of Labor Standards Enforcement (DLSE) will have broad independent authority under Labor Code section 98.7 to bring an action against an employer who terminates or discriminates against an employee in violation of any law under the Labor Commissioner's jurisdiction. The DLSE can bring an action with or without an employee complaint.
- **Notice of domestic violence leave and accommodation rights (AB 2337):** Employers will be required to provide written notice to new employees, and to current employees upon request, of the time off and accommodation rights under Labor Code sections 230 and 230.1 protecting victims of domestic violence, sexual assault, and stalking. The Labor Commissioner, no later than July 1, 2017, must develop a model notice that employers can use, and employers will not be required to comply until this sample is available.
- **Wage statements for exempt employees (AB 2535):** This bill clarifies that an itemized wage statement for certain exempt employees need not show the employee's "total hours worked." The new provision is applicable to employees who fall under the executive, managerial, professional, outside sales, or computer software professional (provided they are paid on a salary basis) exemptions pursuant to any IWC Wage Order. It also applies to, as provided in an applicable Wage Order: parents, spouses, children, or legally-adopted children of the employer; 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; and participants in national service programs.

- **Minimum wage violations (AB 2899):** An employer that is seeking a writ of mandate to contest a Labor Commissioner citation regarding failure to pay minimum wages will be required to first post a bond with the Labor Commissioner. The bond must be issued in favor of the unpaid employee and in an amount equal to the unpaid wages, liquidated damages, and overtime compensation assessed, excluding penalties. Proceeds would be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.
- **Unfair immigration-related practices (SB 1001):** New Labor Code section 1019.1 will make it an “unfair immigration-related practice” to do any of the following in the course of verifying authorization to work: (1) request more or different documents than required under federal law to verify work authorization (the I-9 process); (2) refuse to honor documents tendered that on their face reasonably appear to be genuine; (3) refuse to honor documents or work authorization based on the specific status or term that accompanies the authorization to work; or (4) attempt to reinvestigate or re-verify an incumbent employee’s work authorization using an unfair immigration-related practice. Individuals who suffer an unfair immigration-related practice can file a complaint with the DLSE for enforcement, and violations carry a penalty of up to \$10,000.
- **Pay equity based on race and ethnicity (SB 1063):** The new Wage and Equality Act extends California’s Fair Pay Act protections in Labor Code section 1197.5 to race and ethnicity, such that it will now be unlawful to pay employees less than employees of another race or ethnicity for “substantially similar work.”
- **Choice of law and forum in employment contracts (SB 1241):** New Labor Code section 925 will prohibit employers from requiring that an employee who lives and works in California agree, as a condition of employment, to a provision that would: (1) require the employee to litigate or arbitrate outside of California claims that arise in California; or (2) deprive the employee of the protection of California law with respect to a controversy arising in California. A contract that violates these restrictions is voidable at the employee’s request, and the matter would be

adjudicated in California under California law. The law applies to contracts entered into, modified, or extended on or after January 1, 2017. However, it does not apply where the employee is individually represented by legal counsel in negotiating the terms of an agreement with respect to choice of law or forum.

Getting Ready

In light of these new laws, employers should consider the following action steps:

1. Update the employee handbook and all employment documents for compliance with all new laws for 2017.
2. Train HR staff and managers on new employment laws.
3. Expand pay equity audits to include review of wage disparities based on race and ethnicity, in addition to gender.
4. Ensure that prior salary is not relied upon to justify gender pay disparities. Employers should also consider eliminating from the application and hiring process questions seeking an applicant's prior salary history.
5. Review employment contracts that are required as a condition of employment for employees who live and work in California. Provisions that require adjudication (litigation or arbitration) outside of California or application of non-California law should be removed, unless the employee is independently represented by counsel in the negotiation of such provisions.
6. Prepare to notify applicants, as well as current employees upon request, of rights to time off and reasonable accommodations for victims of domestic violence, sexual assault, and stalking.
7. Update employment application forms and all hiring processes to eliminate questions that may request juvenile criminal history.
8. Review I-9 work authorization procedures to ensure they are being carefully followed in all hiring and reverification situations, to avoid "unfair immigration-related practice" violations.

9. Install signage at all single-occupancy restrooms to indicate that they are “all gender.”
10. Employers with agricultural workers should prepare to phase in new daily and weekly overtime pay requirements.

Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, wage and hour class actions, trials, appeals, compliance advice and counseling. If you have questions about these developments or other workplace obligations, please contact us at (415) 464-4300.

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