

New Laws for 2017

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Wage and Hour

Minimum Wage

SB 3 will increase the minimum wage over the next several years to \$15 an hour. For January 1, 2017, businesses with 26 or more employees must pay a minimum wage of \$10.50 per hour. Small businesses with 25 or fewer employees are not required to begin the scheduled increase until 2018. The legislation allows for future increases to the minimum wage based on the Consumer Price Index.

The minimum wage increase will require all employers to post a new Minimum Wage Order (MW-2017). The upcoming minimum wage increase also will have an effect on other pay practices, such as the overtime rate.

Agricultural Overtime

AB 1066 will phase in increased overtime requirements for agricultural employees over the course of four years beginning **January 1, 2019**. Currently, agricultural employees are exempt from certain wage requirements.

Agricultural employers will initially start paying overtime when employees work more than 9.5 hours per day/55 hours per week. This number will decrease yearly until it reaches 8 hours per day/40 hours per week by January 1, 2022. Employers with 25 or fewer employees will have an additional three years to comply with the phasing in of these requirements and won't start paying overtime until 2022.

In addition to phased in overtime, AB 1066 eliminates an important existing exemption for agricultural employers. Currently, agricultural employers are exempt from the Labor Code requirement to provide one day's rest in seven worked. Effective **January 1, 2017**, agricultural employers are no longer exempt from this provision and cannot cause employees to work more than six days in seven.

Itemized Wage Statements

AB 2535 amends Labor Code Section 226 and clarifies that employees who are exempt from the payment of minimum wage and overtime are not required to have their hours tracked and logged on an itemized wage statement, commonly referred to as a pay stub.

Payroll

AB 1847 requires employers who must notify employees of their eligibility for the federal Earned Income Tax Credit to also notify these employees that they may be eligible for the California Earned Income Tax Credit. The bill updates the required notice that must be given to employees.

Challenges to Minimum Wage Violations

Under AB 2899, employers who contest a Labor Commissioner ruling that they failed to pay the minimum wage must post a bond equal to the unpaid wages, excluding penalties.

Local Wage Enforcement

SB 1342 grants local officials or department heads the power to issue subpoenas and to report noncompliance with employment-related ordinances, such as local minimum wage ordinances, to superior court judges. The legislative intent of this new law further encourages cities and counties to enact measures to combat wage theft.

Janitorial Workers

AB 1978 enacts new recordkeeping, registration and training requirements for the janitorial industry. The intent is to protect janitorial workers from wage theft and sexual violence or harassment.

- The recordkeeping requirements begin **January 1, 2017**.
- The requirement for covered janitorial employers to register annually with the Labor Commissioner begins **July 1, 2018**.
- Sexual violence and harassment prevention training must be developed by the Division of Labor Standards Enforcement by **January 1, 2019**. Until the training is developed, covered employers will have to start giving employees the sexual harassment prevention pamphlet from the Department of Fair Employment and Housing (DFEH) beginning **July 1, 2018**.

Overtime for Private Elementary or Secondary School Teachers

Currently, private school teachers in California must earn two times the state minimum wage to be exempt from overtime and must meet all other requirements for the exemption.

Under AB 2230, private school employees will need to meet a new minimum earnings test that will look at the comparable salaries offered to public school teachers in the school district or county, rather than the state minimum wage. This legislation is effective **July 1, 2017**.

Licensure Requirements for Hair Salons/Nail Salons

AB 2437 requires any establishment that is licensed by the Board of Barbering and Cosmetology (BBC) (e.g., hair salons, nail salons, estheticians, etc.) to post a notice regarding workplace rights and wage-and-hour laws by **July 1, 2017**. The Labor Commissioner must create the model notice. Failure to post the notice will result in a fine.

AB 2025 requires the BBC to provide every licensure applicant with basic labor law education as part of the health and safety curriculum provided at BBC schools. This law is also effective **July 1, 2017**.

Domestic Workers

SB 1015 extends the Domestic Worker Bill of Rights, which was to be repealed on January 1, 2017.

Temporary Services; Wages

Under the Labor Code, employees of a temporary service employer must be paid weekly, regardless of when the assignment ends. AB 1311 applies the weekly pay requirement to security guards employed by private patrol operators who are temporary services employers. This urgency legislation took effect on **July 25, 2016**.

Discrimination and Retaliation Protections

Fair Pay

Last year, significant amendments were made to California's equal pay laws to address gender wage inequality. This year, two new bills expand California's Fair Pay Act.

- SB 1063 prohibits an employer from paying any of its employees wage rates that are less than the rates paid to employees of *another race or ethnicity* for substantially similar work.

- AB 1676 specifies that, under the Fair Pay Act, prior salary cannot, by itself, justify any disparity in compensation. The law is intended to “help ensure that both employers and workers are able to negotiate and set salaries based on the requirements, expectations, and qualifications of the person and the job in question, rather than on an individual’s prior earnings, which may reflect widespread, long-standing, gender-based wage disparities in the labor market.”

Harassment Prevention Training

AB 1661 requires local agency officials, including local elected officials, to receive sexual harassment prevention training and education whenever those officials receive any type of compensation, salary or stipend. The requirements for this training differ from requirements under AB 1825 training.

See also the discussion of harassment prevention training for janitorial workers in the *Wage and Hour* section.

All-Gender Restrooms

AB 1732 sets a new requirement that, beginning **March 1, 2017**, all single-user toilet facilities in any business establishment, place of public accommodation or government agency must be identified as “all-gender” toilet facilities.

Immigration-Related Protections

Employers are required by federal law to verify an employee’s eligibility to work using the *Form I-9* process. Under federal law, it is unlawful for employers to ask for more or different documentation than is required by the *Form I-9*, refuse to accept documents that appear genuine on their face or engage in other types of document abuse. SB 1001 makes this type of conduct unlawful under state law as well.

Violators may be subject to a penalty of up to \$10,000.

Definition of Employee

AB 488 revises the definition of employee under California’s Fair Employment and Housing Act (FEHA) to authorize an individual employed under a special license in a nonprofit sheltered workshop, day program or rehabilitation facility to bring an action under the FEHA for any form of prohibited harassment or discrimination.

Human Trafficking

AB 1684 authorizes the DFEH to receive, investigate and prosecute complaints from victims of human trafficking. The DFEH can bring civil actions on behalf of these victims.

State Contracts and Anti-Discrimination Certification

AB 2844 requires those who bid, propose or renew a contract of \$100,000 or more with a state agency to certify their compliance with the Unruh Civil Rights Act and FEHA.

Discrimination Regulations and Enforcement

SB 1442 consolidates various anti-discrimination regulations and enforcement and investigatory powers under the jurisdiction of the DFEH. It removes other state agencies’ authority to issue regulations prohibiting discrimination.

Leaves of Absence and Benefits

Paid Family Leave Benefits

Effective **January 1, 2018**, AB 908 increases the amount of paid family leave (PFL) benefits an employee can receive from 55 percent of earnings to either 60 percent or 70 percent of earnings, depending on the employee's income. There still will be a maximum weekly benefit on the amount received. The new law also will remove the current seven-day waiting period that exists before an employee is eligible to receive PFL benefits.

Domestic Violence, Sexual Assault and Stalking Protections

AB 2337 requires employers with 25 or more employees to provide employees with written notice about the rights of victims of domestic violence, sexual assault and stalking to take protected time off for medical treatment or legal proceedings.

A required form must be given to all new employees when hired and to current employees upon request. The Labor Commissioner is required to develop the form on or before **July 1, 2017**. Employers are not required to comply with this notice requirement until the Labor Commissioner posts the new form on its website.

Private Retirement Savings Plans

SB 1234 approves the California Secure Choice Retirement Savings Program (SCRSP), which is a state-run retirement plan for private-sector workers. Specific prerequisites must be met before the SCRSP can be implemented, and it may be some time before we actually see this program up and running.

Under SB 1234, employers with five or more employees that do not offer specified retirement plans must put a payroll arrangement into place so that employees may contribute a portion of their salary or wages to a retirement saving program in the SCRSP.

Paid Sick Leave

SB 3 extends California's paid sick leave law to cover in-home supportive services workers beginning **July 1, 2018**. The amendments also set forth a specific amount of paid sick leave that must be provided to these workers, which is different from the amount provided to other California employees.

AB 2393 provides specific rules relating to the interaction of sick leave and parental leave for school district employees working in positions requiring certification qualifications.

Disability Benefits

AB 2886 extends the appeal time for disability benefits from 20 to 30 days, effective **March 1, 2018**.

Background Checks

Juvenile Criminal History Information

AB 1843 prohibits employers from inquiring into an applicant's juvenile convictions or using such convictions as a factor in determining any condition of employment.

For health care facilities, AB 1843 allows employers to inquire into juvenile adjudications for felony or misdemeanor sexual offenses or drug possessions within the prior five years.

Criminal Background Check — Ride Sharing Services

AB 1289 requires a “transportation network company” (think Uber and Lyft) to conduct local and national criminal background checks for each participating driver and prohibits the use of drivers with certain types of convictions.

Workplace Safety

Indoor Heat Illness

SB 1167 requires Cal/OSHA to propose a heat-illness and injury prevention standard for **indoor** workers by **January 1, 2019**. SB 1167 does not specify what provisions will be included in the new rule or what types of workplaces will be covered — potentially, the new rule could include all indoor workplaces.

Driving

AB 1785 reaffirms the general ban on using wireless electronic devices while driving, but amends existing law to authorize drivers to use their hand to activate or deactivate a feature or function of the device with a single swipe or tap, as long as the device is mounted so as not to hinder the driver’s view of the road.

Smoking

New legislation which will change rules relating to smoking in the workplace and expand already-existing smoke-free workplace protections went into effect on **June 9, 2016**. In part, the new legislation will:

- Treat the use of e-cigarettes and other nicotine-delivery devices, such as vaporizers, as “smoking” — thus extending existing smoking bans to cover such products.
- Expand smoke-free workplace protections by getting rid of most of the existing exemptions that permitted smoking in certain work environments, such as bars, hotel lobbies, warehouse facilities and employer-designated smoking break rooms.
- Expand the workplace smoking ban to include owner-operated businesses.
- Raise the legal smoking age from 18 to 21, except for active military personnel.

Litigation

Choice of Forum; Choice of Law

Under SB 1241, an employer cannot require an employee who primarily works and resides in California to agree to:

- Adjudicate a claim in another state when the claim arises in California (prohibiting choice of forum).
- Apply another state’s law to a controversy that arises in California (prohibiting choice of law).

Workers' Compensation

SB 1160 and AB 2503:

- Make changes to the utilization review process with respect to injuries occurring on or after **January 1, 2018**.
- Require regulations to be adopted to provide employees with notice that they may access medical treatment outside the workers' compensation system following the denial of their claim.
- Make changes regarding liens filed after **January 1, 2017**.
- Amend the reporting and request for authorization requirements for physicians who attend to ill or injured employees.

AB 1244 requires prompt suspensions of physicians, practitioners or providers from participating in the workers' compensation system if convicted of fraud or abuses of the Medi-Cal or Medicare programs or the workers' compensation system.

AB 2883 clarifies when owners or officers of businesses may be excluded from workers' compensation laws.

SB 1175 requires providers to submit bills for medical services to the employer within one year of the date of service

Public Works and Prevailing Wages

AB 326 — requires the release of funds held pending a prevailing wage determination;

AB 1926 — relates to the payment of apprentices for pre-employment activities, such as testing or training; and

SB 954 — limits the ability for a nonunion contractor to receive a credit for certain payments made against the prevailing wage.

This information was obtained from:

CalChamber. HR California Extra. *An Overview of New 2017 Laws Affecting California Employers*. October 2016. Web.