New Employment Laws for 2018

Wage and Hour

Minimum Wage Increase

Labor Law Enforcement, Retaliation

Increased Liability for Construction Contractors

Barbering and Cosmetology

Hiring Practices and Enforcement

Ban-the-Box Law

No More Salary History Questions

Worksite Immigration Enforcement and Protections

Alcohol Servers

Leave of Absence and Benefits

Parental Leave for Small Employers

Paid Family Leave and SDI Benefits

Unemployment Insurance

Discrimination, Harassment, and Retaliation Protections

Harassment Prevention Training: Gender Identity/Gender Expression, Sexual Orientation

Harassment Prevention Training: Farm Labor Contractors

Gender identification: Female, Male or Nonbinary

Employment Discrimination: Gender Neutral Language

Fair Pay Act Expansion

LGBT Rights for Long-Term Care Facility Residents

Human Trafficking

Anti-Discrimination Protections for Veterans

Health Facilities: Whistleblower Protections

Workplace Safety and Workers' Compensation

Wage and Hour

Minimum Wage Increase

On January 1, 2018, the state minimum wage increases to $10.50 per hour for employers with 25 or fewer employees and to $11 per hour for employers with 26 or more employees. This is not a new law—SB 3 was signed in 2016, and this is the next mandatory increase. Remember, the increase to minimum wage may also require you to increase salary amounts for certain exempt employees. In addition, make sure you are aware of any local minimum wage ordinances that apply to your business.

Labor Law Enforcement, Retaliation

SB 306 expands the Labor Commissioner's authority to enforce wage and hour laws. The Labor Commissioner can:

- Investigate an employer—even without a complaint from an employee—when the Labor Commissioner suspects retaliation or discrimination against a worker during a wage claim or other investigation.
- Obtain a court order prohibiting an employer from firing or disciplining an employee even before completing its investigation or determining retaliation has occurred. The court order can be obtained upon a showing of "reasonable cause," which is a much lower burden of proof than is currently required. An employer may still discipline or fire an employee for conduct unrelated to the retaliation claim.
- Penalize an employer up to $100 per day (maximum of $20,000) for:
    - Willful refusal to comply with an order to reinstate or otherwise restore an employee or former employee; or
    - Refusal to comply with an order to post a notice to employees or stop the alleged conduct.

The bill also creates a new citation process for alleged violations.

Increased Liability for Construction Contractors

For certain private construction contracts entered into after January 1, 2018, AB 1701 imposes liability onto the general contractor for any unpaid wages, benefits or contributions that a subcontractor owes to a laborer who performed work under the contract. The bill authorizes the general contractor to request payroll records from subcontractors to confirm that wages and other benefits or contributions are being made.

Barbering and Cosmetology

Two new laws affect barbering and cosmetology employers and licensees.

SB 490 clarifies that workers licensed under the Barbering and Cosmetology Act (BCA) can agree to a percentage or flat-sum commission in addition to a base hourly rate if certain conditions are met:

- The employee is licensed under the BCA and is providing services for which a license is required;
- The employee is paid a regular base hourly rate of at least two times the state minimum wage for all hours worked in addition to commissions paid;
- The commission wages are paid at least twice each calendar month on a day designated in advance by the employer as the regular payday; and
- Rest and recovery periods are paid at no less than the regular base hourly rate.

AB 326 requires additional licensee training.

Existing law requires Board of Barbering and Cosmetology schools to include information on basic labor laws as part of the health and safety curriculum for licensees. AB 326 requires that, beginning July 1, 2019, the course includes information on physical and sexual assault awareness to ensure licensees are aware of abuse their clients may be experiencing (such as domestic violence, human trafficking, sexual assault and elder abuse).

Hiring Practices and Enforcement

Ban-the-Box Law

AB 1008 is "ban-the-box" legislation that prohibits employers with **five or more employees** from asking about criminal history information on job applications and from inquiring about or considering criminal history *at any time before a conditional offer of employment* has been made. There are limited exemptions for certain positions, such as those where a criminal background check is required by federal, state or local law.

Once an employer has made a conditional offer of employment, it may seek certain criminal history information; however, some criminal history information, such as sealed or expunged convictions and juvenile crimes, is still off limits.

If an employer intends not to hire the applicant because of a prior conviction, the employer must first conduct an individualized assessment to determine whether the conviction has a direct and adverse relationship with specific job duties that justifies denying employment. The employer must consider specified factors in making this assessment.

Any preliminary decision not to hire because of a conviction history requires written notice to the applicant, who must be given the opportunity to respond. A specific timeline and process must be followed. The employer must consider any information provided by the applicant before making a final decision.

If the employer makes a final decision to deny employment in whole or in part because of the criminal conviction, written notice to the applicant is again required. Specific information must be included in the final determination notice.

No More Salary History Questions

AB 168 bans employers from asking about a job applicant's salary history, including information on compensation and benefits. Employers also are banned from seeking the information through an agent, such as a third-party recruiter.

This new law also prohibits employers from relying on salary history information as a factor in determining whether to hire the applicant **or** how much to pay the applicant. However, an employer may consider salary information that is voluntarily disclosed by the applicant without any prompting.

AB 168 further requires an employer to provide a job applicant, upon reasonable request, with the pay scale for the position.

Worksite Immigration Enforcement and Protections

The Immigrant Worker Protection Act (AB 450)—part of a package of bills the governor signed to create a "sanctuary state"—provides workers with protection from immigration enforcement while on the job. AB 450 prohibits employers from:

- Providing federal immigration enforcement agents access to nonpublic areas of a business without a judicial warrant; and
- Providing agents access to employee records without a subpoena or judicial warrant. This prohibition does not apply to *Form I-9* or other documents for which a Notice of Inspection was provided to the employer. However, employers must follow specific requirements related to *Form I-9* inspections.

An employer that provides access in violation of AB 450 can be fined anywhere from $2,000 to $5,000 for a first violation and $5,000 to $10,000 for each subsequent violation.

Regarding *Form I-9* inspections, AB 450 requires employers to:

- Post a notice to all current employees informing them of any federal immigration agency's inspections of *Forms I-9* or other employment records **within 72 hours** of receiving Notice of Inspection. AB 450 requires that the notice contain specific information about the inspection and that it be posted in the language normally used to communicate employment-related information. Employers must comply with this posting requirement beginning January 1, 2018, even though the Labor Commissioner has until July 1, 2018, to create a model posting template. The notice must also be given to the collective bargaining representative, if any.
- Provide a copy of the federal Notice of Inspection to an affected employee upon reasonable request.

- Give each affected employee and the employee's collective bargaining representative a copy of the inspection results and a written notice of the employer's and employee's obligations arising from the inspection. This must be done **within 72 hours** of receiving the results and specific information must be included. An "affected employee" is one identified by the inspection results as potentially lacking work authorization or having document deficiencies.

An employer that fails to follow these notice requirements can be fined between $2,000 to $5,000 for a first violation and $5,000 to $10,000 for each subsequent violation.

This bill also makes it unlawful for employers to re-verify the employment eligibility of current employees in a time or manner not allowed by federal employment eligibility verification laws. Federal law already prohibits unlawful reverification practices, such as reverification of unexpired documentation. However, this bill adds an additional state civil penalty of up to $10,000.

Alcohol Servers

AB 1221 requires bartenders and other alcohol servers to receive mandatory training on alcohol responsibility and to obtain an alcohol server certification. Businesses with a license to serve alcohol must ensure that each alcohol server they hire or employ has the certification. The training will include such topics as how alcohol impacts the body, drunk driving laws and how to prevent service to intoxicated patrons. These requirements go into effect in 2021, after the course is developed by the Department of Alcoholic Beverage Control.

Leave of Absence and Benefits

Parental Leave for Small Employers

SB 63, the New Parent Leave Act, requires small businesses with 20 or more employees to provide eligible employees up to 12 weeks of unpaid job-protected leave to bond with a new child within one year of the child's birth, adoption or foster care placement. SB 63 only requires employers to provide parental leave; it does not require employers to provide leave for other reasons, such as a family member's medical issue. The Act covers all employers with 20 or more employees.

To be eligible for the new parent leave, an employee must:

- Have worked for the employer more than 12 months;
- Have worked at least 1,250 hours during the prior 12-month period; and
- Work at a worksite where there are at least 20 employees within a 75-mile radius.

This new law will have the greatest impact on employers with 20 to 49 employees who are not currently required to provide baby bonding leave under the federal Family and Medical Leave Act or the state California Family Rights Act.

If an employee takes this leave, an employer must maintain and pay for coverage under a group health plan at the same level and conditions that coverage would have been provided if the employee had continued working.

Before the leave starts, an employer must provide the employee with a guarantee of reinstatement to the same or comparable position. *Failure to provide the guarantee will be deemed a violation of the law, as if the employer refused to provide leave.*

Under SB 63, an employer can be sued if an employee alleges that the employer:

- Did not provide the 12 weeks of protected leave;
- Failed to return the employee to the same or a comparable position;
- Failed to maintain benefits while the employee was out on leave; or
- Took any adverse employment action against the employee for taking the leave.

Paid Family Leave and SDI Benefits

A bill from 2016 affects Paid Family Leave (PFL) and State Disability Insurance (SDI) benefits starting on January 1, 2018. This bill, AB 908, increases the amount of PFL or SDI benefits an employee can receive to either 60 percent or 70 percent of earnings, depending on the employee's income. There will still be a maximum weekly benefit limit on the amount received.

AB 908 also removes the current seven-day waiting period that exists before an employee is eligible to receive PFL benefits (it is not removed from SDI).

Employees who are eligible for leave under the New Parent Leave Act will be able to apply for PFL wage replacement benefits.

Unemployment Insurance

Under AB 1695, domestic service employers will no longer be allowed to file wage reports by telephone.

Also remember that a law from 2015 requires employers to electronically submit all employment tax returns, wage reports and payroll tax deposits to the Employment Development Department (EDD). The requirement became effective on January 1, 2017, for employers with 10 or more employees. Beginning January 1, 2018, **all** employers will be required to electronically file and pay.

Discrimination, Harassment, and Retaliation Protections

Harassment Prevention Training: Gender Identity/Gender Expression, Sexual Orientation

California employers with 50 or more employees must provide supervisors with two hours of sexual harassment prevention training every two years.

Under SB 396, covered employers will have to make sure that any mandatory training course they use also discusses harassment based on gender identity, gender expression and sexual orientation. The training content must include practical examples intended to address these types of harassment.

SB 396 also requires employers to display a poster on transgender rights that the Department of Fair Employment and Housing will develop.

Harassment Prevention Training: Farm Labor Contractors

SB 295 affects the sexual harassment prevention training that farm labor contractors must provide in order to receive a farm labor contractor's license. Contractors must now provide training in the language understood by the employee (or interpret into that language). Contractors applying for license renewal also must provide the Labor Commissioner with a list of all harassment prevention training materials and resources used and the total number of individuals trained.

Failure to follow the farm labor contractor training requirements will now be a Labor Code violation; a penalty of $100 for each violation may be assessed by the Labor Commissioner.

Gender identification: Female, Male or Nonbinary

With the signing of SB 179, California became the first state in the nation to allow residents to choose from three equally recognized gender options—female, male or nonbinary—on state-issued identification cards, birth certificates and driver's licenses. (Oregon recognizes the nonbinary gender marker solely on driver's licenses.)

For changes to birth certificates, the law is effective on September 1, 2018. For changes to driver's licenses, the law is effective January 1, 2019.

The bill also makes it easier for individuals to change their gender on legal documents. Individuals will no longer have to show that they have undergone "clinically appropriate treatment." Instead, an individual can make the legal gender change by attesting, under penalty of perjury, that the request is to conform the person's legal gender to the person's gender identity and not for a fraudulent purpose. This portion of the bill is effective September 1, 2018.

Employment Discrimination: Gender Neutral Language

AB 1556 revises California's Fair Employment and Housing Act (FEHA) by deleting gender-specific personal pronouns in California's anti-discrimination, anti-harassment, pregnancy disability and family/medical leave laws by changing "he" or "she," for example, to "the person" or "the employee."

Also remember that FEHA transgender regulations from earlier this year require employers to honor an employee's request to be identified by a preferred gender, name or pronoun, including gender-neutral pronouns.

Fair Pay Act Expansion

AB 46 extends California's Fair Pay Act—which prohibits wage discrimination on the basis of gender, race and ethnicity—to cover public employers; existing law only covers private employers. While public employers will now be covered, the Labor Code provision that makes willful violation of the Fair Pay Act a misdemeanor only applies to a private employer, not a public employer.

LGBT Rights for Long-Term Care Facility Residents

SB 219 enacts the Lesbian, Gay, Bisexual, and Transgender (LGBT) Long-Term Care Facility Resident's Bill of Rights, strengthening anti-discrimination protections for LGBT individuals living in long-term care facilities. Under the bill, it is unlawful for a facility or facility staff to take certain actions because of a person's actual or perceived sexual orientation, gender identity, gender expression or HIV status, such as:

- Willfully and repeatedly fail to use a resident's preferred name or pronoun;
- Deny admission to a long-term care facility;
- Transfer or refuse to transfer a resident within a facility or to another facility;
- Evict or discharge a resident from a facility;
- Prohibit residents from wearing clothes that are allowed for any other resident; and
- Restrict the right to associate with other residents.

Facilities are required to post a notice about the protections (the exact language of the notice is specified in the bill). SB 219 also imposes recordkeeping requirements on facilities.

Human Trafficking

Certain California businesses are required by law to post a notice containing information about human trafficking and slavery. AB 260 extends the list of covered businesses that must post the notice to include hotels, motels and bed and breakfast inns, as defined.

And SB 225 requires that the human trafficking notice include not only the number individuals can call for services and support, but also the new number for those who wish to send text messages.

SB 225 makes other revisions to the model notice, which the California Department of Justice will complete. Businesses will not be required to post the updated model notice until on or after January 1, 2019. Monetary penalties for not complying with the notice requirement range from $500 for the first offense to $1,000 for each subsequent offense.

Anti-Discrimination Protections for Veterans

AB 1710 expands the current protections for members of the armed services by prohibiting discrimination in all "terms, conditions, or privileges" of employment. This legislation conforms state

law to the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) by protecting servicemembers from hostile work environments in their civilian jobs.

Health Facilities: Whistleblower Protections

Existing law makes it illegal to discriminate or retaliate against an employee who raises a concern about conditions at a health facility. AB 1102 increases the maximum fine for a willful violation of these provisions from $20,000 to $75,000.

Workplace Safety and Workers' Compensation

SB 258 establishes the Cleaning Product Right to Know Act. It requires manufacturers of designated cleaning products to disclose the chemicals in those products and create product safety data sheets. Designated cleaning products include general cleaning, air care, automotive, or polish or floor maintenance products used primarily for janitorial, industrial or domestic cleaning purposes.

SB 258 affects employers that have these designated cleaning products in their workplaces. Under the existing Hazard Communications Program standard, employers are required to maintain and make readily accessible safety data sheets providing information about hazardous substances. SB 258 will require employers to also obtain information from manufacturers about the cleaning products covered under this Act and make those safety data sheets available.

AB 44 requires employers to provide a nurse case manager to employees injured during the course of employment by an act of domestic terrorism. Employer-appointed nurse case managers will act as advocates to help injured workers obtain medically necessary medical treatments. This bill will also require an employer to provide a notice to claimants that will be developed by the Division of Workers' Compensation. These provisions are applicable only if the governor declares a state of emergency in connection with an act of domestic terrorism.

The Division of Workers' Compensation will adopt regulations to implement this new law, including regulations on the scope and timing of the employer's obligation to provide a nurse case manager and the contents of the notice that employers must provide to claimants.

SB 189, which is effective July 1, 2018, clarifies when owners, officers of businesses, members of boards of directors, general partners in a partnership and managing members of LLCs may be excluded from workers' compensation laws. This bill revisits AB 2883 from 2016, the structure of which was challenging to stakeholders. SB 189 also includes provisions allowing the ability to grandfather in prior waivers.

AB 1422 extends the automatic stay on liens filed by medical providers who are charged with criminal fraud. AB 1422 cleans up issues that resulted from the enactment of SB 1160 in 2016.

SB 489 extends the billing deadline for providers of emergency treatment services from 30 days to 180 days.

This information was obtained from:

CalChamber. HR California Extra. *New Employment Laws for 2018.* November 2, 2017. Web.