

# How the New California Laws Will Impact Your Business in 2014 and Beyond, Part 3: California Immigration Related Legislation

[Betsy Johnson](#) | November 5, 2013

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The final post in this three-part series on the newly-signed legislation in California covers the three immigration-related bills that Governor Brown recently signed. I also discuss two significant bills that the governor vetoed.

## CALIFORNIA IMMIGRATION-RELATED LEGISLATION

### 1. **AB 263: Unfair Immigration-Related Practices**

AB 263 adds Labor Code sections 1019 et seq. and outlines certain “unfair immigration-related practices.” Prohibited practices include requesting more or different documents than what is required under federal I-9 rules, refusing to honor documents that appear genuine on their face, using federal E-verify to check status in a manner not required or authorized under the program, and threatening to file or filing a false police report. This new law expands protected conduct to include a written or oral complaint by an employee that he or she is owed unpaid wages and prohibits employers from preventing an employee from providing information to or testifying before any public body conducting an investigation, hearing, or inquiry, and prohibits retaliation based on such conduct.

#### *What Employers Should Do*

Employers should review and, if necessary, change their procedures related to the completion of I-9s. In addition, employers should adopt a protocol for receiving and handling employee complaints regarding mistakes in their pay.

### 2. **SB 666: Retaliation Based on Immigration/Citizenship Status**

SB 666 adds sections 494.6 and 6103.7 to the Business and Professions Code, amends Labor Code sections 98.6 and 1102.5, and adds Labor Code section 244. This new law applies to employers that report or threaten to report

- an employee's, former employee's, or prospective employee's suspected citizenship or immigration status; or
- the suspected citizenship or immigration status of a family member of the employee, former employee, or prospective employee

to a federal, state, or local agency. Under the law, employers that threaten to report immigration status because the employee, former employee, or prospective employee exercises a right under the provisions of the Labor, Government, or Civil Code are deemed to have taken an unlawful adverse action against the individual for purposes of establishing a violation of the individual's legal rights. In addition, this new law provides that an employer's business license may be suspended or revoked as a result of the employer's violation of this law.

#### *What Employers Should Do*

Employers should notify all supervisors that they may not threaten to use employees' or applicants' suspected immigration status as leverage against them.

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### 3. AB 60: Driver's Licenses for Undocumented Residents

AB 60 allows undocumented California residents to obtain valid driver's licenses. These driver's licenses will include language indicating that the license is not valid work authorization. This new law takes effect on January 1, 2015.

#### *What Employers Should Do*

Employers should review and, if necessary, change their procedures related to the completion of I-9s.

### CALIFORNIA BILLS VETOED BY THE GOVERNOR

Governor Brown vetoed two bills that are worth noting here since different versions of this legislation may be introduced in a subsequent legislative session.

#### 1. Privileged Communications Between a Union Agent and Employee

AB 729 would have protected from disclosure confidential communications between a union agent and a represented employee or former employee. This evidentiary privilege would be similar to the attorney-client privilege.

#### 2. California Mixed Motive Decision Codified

SB 655 would have amended Government Code section 12965 and would have added section 12940.5 to provide that a plaintiff claiming discrimination or retaliation under the Fair Employment and Housing Act (FEHA) will prevail if he or she can prove a protected activity or characteristic was a "substantial motivating factor" for the adverse employment action. If an employer proves it would have made the same decision regardless of the protected category, then the employee could not recover reinstatement, back pay, compensatory damages, or declaratory relief. However, the employee could recover injunctive relief, attorneys' fees and costs, including expert witness fees, and a statutory penalty of up to \$25,000. This bill was intended to codify the California Supreme Court's decision this year in *Harris v. City of Santa Monica* regarding employers' mixed motives for adverse employment actions.

Part one of this series, "[How the New California Laws Will Impact Your Business in 2014 and Beyond, Part 1: Wage and Hour Legislation](#)," covered California's new wage and hour laws. Part two, "[How the New California Laws Will Impact Your Business in 2014 and Beyond, Part 2: EEO, Disability, and Leave Legislation](#)," covered the newly-signed EEO, disability, and leave legislation.

[Betsy Johnson](#) is the managing shareholder of the Los Angeles office of Ogletree Deakins. Betsy will be discussing these and other California laws at an upcoming breakfast seminar, "New York Employers Doing Business in California." The program will be held at the Harvard Club in New York City on November 14, 2013. You can register for the seminar [here](#).

November 5 | TAGS: [AB 263](#), [AB 60](#), [AB 729](#), [Business and Professions Code section 494.6](#), [Business and Professions Code section 6103.7](#), [California Supreme Court](#), [confidential communications](#), [discrimination](#), [Driver's Licenses for Undocumented Residents](#), [E-Verify](#), [federal I-9 rules](#), [FEHA](#), [Government Code section 12940.5](#), [Government Code section 12965](#), [Harris v. City of Santa Monica](#), [Labor Code section 1102.5](#), [Labor Code section 244](#), [Labor Code section 98.6](#), [Labor Code sections 1019 et seq.](#), [retaliation](#), [Retaliation Based on Immigration/Citizenship Status](#), [SB 655](#), [SB 666](#), [suspected citizenship or immigration status](#), [the Fair Employment and Housing Act](#), [union](#), [valid driver's license](#), ["unfair immigration-related practices"](#).

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