

California Employment Law Update: What's New for 2014

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The California Legislature was unusually active this year. Significantly, California increased the state minimum wage, created new “unfair immigration-related practices,” and expanded protections for whistleblowers. All laws take effect on Jan. 1, 2014, unless otherwise noted.

WAGE/HOUR

Minimum wage increase – AB 10

On July 1, 2014, the California minimum wage will increase from the current \$8.00 to \$9.00 per hour. On Jan. 1, 2016, it will again increase to \$10.00 per hour. In addition to impacting the amount that must be paid to non-exempt hourly employees, this increase impacts other areas, such as the minimum annualized salary that must be paid to exempt employees (from the current \$33,280 to \$37,440 in July 2014 and \$41,600 in January 2016).

Domestic Workers’ Bill of Rights – AB 241

This law extends coverage of California overtime laws to domestic employees, including personal attendants and housecleaners, who previously were excluded. These employees now will be entitled to receive overtime pay at the time and one-half rate for all hours worked in excess of *nine* in a workday or *45* in a workweek. This law is schedule to sunset on Jan. 1, 2017.

Limit on prevailing employer’s right to attorneys’ fees in wage suits – SB 462

Existing law provides for an award of attorneys’ fees to the prevailing party in a suit for nonpayment of wages and certain benefits. This bill amends that law to provide that when the prevailing party is the employer, the court may award attorneys’ fees only upon finding that the employee brought the claim in bad faith.

Labor Commissioner may award double damages for unpaid wages – AB 442

This law gives the California Labor Commissioner the right to award liquidated damages to employees in an amount equal to the unpaid wages, plus interest, when the employer violates California’s minimum wage law. Employers can defend against such awards by demonstrating that they were in good faith and had reasonable grounds for believing they were in compliance with the law.

Lien created following Labor Commissioner award against employer – AB 1386

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An employer has 10 days to appeal an award of the California Labor Commissioner. Under this new law, when the 10-day period elapses, a lien automatically is created and the Labor Commissioner is authorized to record the lien in any county in which the employer holds real property. The lien continues until it is satisfied or released, up to 10 years.

Penalty for failure to provide Cal-OSHA-Required “recovery periods” – SB 435

Health and safety laws require the provision of paid “recovery periods” to employees in outdoor occupations in certain situations, to prevent heat-related illness. This bill amends the Labor Code to add a provision that failure to provide this recovery period entitles employees to one additional hour of pay per day, just as with missed meal and rest periods.

Administrative exhaustion requirement eliminated – SB 666

This bill eliminates the requirement that employees file a complaint with the California Labor Commissioner before bringing a lawsuit for Labor Code violations unless a statute expressly requires administrative exhaustion (which most do not).

DISCRIMINATION

Prohibition of “unfair immigration-related practices” – AB 263, SB 666

Two separate bills create new protections for employees in relation to “immigration-related practices.” AB 266 prohibits employers from retaliating against employees for exercising any employment-related right, including complaining to the employer about unpaid wages, by: (i) requesting more or different documents than federal law requires for proof of employment eligibility; (ii) using the e-Verify system to check employment eligibility at a time not required by federal law; (iii) threatening to file a false police report; (iv) threatening to contact (or contacting) immigration authorities; or (v) taking any adverse employment action against the employee.

SB 666 permits suspension or revocation of an employer’s business license if the employer reported or threatened to report to a federal, state, or local agency the suspected citizenship or immigration status of an employee, an applicant, or the family member of an employee or applicant. This bill also provides that an attorney may be disciplined or disbarred for reporting or threatening to report the suspected immigration status of a witness or party to an action, or the family member of a witness or party, because the witness or party exercised a right related to employment.

Amendment FEHA regarding sexual harassment – SB 292

This bill amends the Fair Employment and Housing Act (“FEHA”) to make clear that sexual harassment need not be motivated by sexual desire in order to constitute a violation.

Military and veteran status added as a protected category under FEHA – AB 556

“Military and veteran status” is added to the list of categories protected from employment

discrimination under FEHA. "Military or veteran status" is defined as an individual's membership in, or status as a veteran of, the U.S. Armed Forces, the U.S. Armed Forces Reserve, the U.S. National Guard, and the California National Guard.

LEAVES OF ABSENCE

Expanded leave rights for crime victims – SB 288

This bill adds section 230.5 to the Labor Code and provides that an employee who is the victim of certain serious or violent crimes, or whose spouse, parent, child, sibling, or guardian is the victim of such a crime, may take time off of work to be heard at court proceedings in which a right of the victim is at issue, including hearings relating to post-arrest release decisions, pleas, sentencing, and post-conviction release decisions. Employers are prohibited from discharging or discriminating against employees who take time off under this law.

Leave rights and job protection for victims of stalking – SB 400

Victims of stalking now share the same rights under Labor Code sections 230 and 230.1 as those pertaining to victims of domestic violence and sexual assault. Specifically, stalking victims must be permitted to take time off work to attend to issues arising from the stalking, and cannot be discriminated against for having done so.

Time off for reserve peace officers and emergency rescue personnel – AB 11

Labor Code section 230.4 is amended to extend to reserve peace officers and emergency rescue personnel who work for employers with 50 or more employees the same rights as previously existed for volunteer firefighters, to take up to 14 unpaid (or paid using the employee's accrued time off) days per year to participate in law enforcement and emergency rescue training. All of these first responders have an unlimited right to time off as necessary to respond to emergencies.

Expansion of paid family leave benefits – SB 770

The existing Paid Family Leave ("PFL") program provides up to six weeks of partial pay replacement benefits when employees take leave to care for a seriously ill family member or to spend time with a new baby or a child newly adopted or placed through foster care. This bill expands PFL to provide benefits when employees take time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law.

OTHER EMPLOYMENT-RELATED LAWS

Broadened protection for whistleblowers – AB 263, SB 666

These two bills expand the protection of employee-whistleblowers by, among other elements, prohibiting retaliation by any person "acting on behalf of the employer," and adding a penalty of \$10,000 for each violation.

Additional limits on criminal record inquiries – SB 530

Existing law prohibits employers from asking employees or applicants about arrests that

did not result in conviction (except for those arrests for which the individual is still awaiting trial), or about participation in a pretrial or post trial diversion program. This new law prohibits most employers from asking applicants to disclose, or using as a factor in employment decisions, any information concerning a conviction that has been judicially dismissed or ordered sealed.

Expanded disclosure requirements in the event of computerized data breaches – SB 46

This law imposes additional disclosure requirements on a business in California that suffers a security breach exposing personal information that could allow access to an online or email account.

Other new laws pertain exclusively to public sector employers, employers who have contracts with the government, and professional athletes. These capsule summaries are intended to inform employers about the most significant of the new statutes and do not fully explore the details of each. For more information on or questions about any of California's new laws, contact Betsy Carroll, Janet Grumer, or Judy Keyes.

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