New California and Federal Employment Laws for 2017

At the close of the 2015-2016 legislative session, Governor Brown signed a number of new employment-related laws into effect. Unless otherwise noted below, these new laws are effective on January 1, 2017.

**Paid Family Leave Expansion (AB 908):** Effective January 1, 2018, the amount of wage-replacement benefits paid to employees on paid family leave and state disability leave will increase to either 60 or 70 percent of the employee’s wages (from the current level of 55 percent), depending on income level. AB 908 also removes the 7-day waiting period for these benefits. *(See Unemployment Insurance Code sections 2655, 2655.1, 3303.)*

**Choice of Law and Forum in Employment Contracts (SB 1241):** SB 1241 prohibits 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 adjudicate outside of California a claim arising in California or (2) deprive the employee of the protection of California law with respect to a controversy arising in California. Any contract provision that violates the statute is voidable by the employee, and the matter would be adjudicated in California under California law. Courts are authorized to award attorney’s fees to employees enforcing their rights under this statute. The prohibition does not apply, however, where the employee was individually represented by legal counsel in negotiating the choice of law or forum provisions in the contract. The law applies to contracts entered into, modified, or extended on or after January 1, 2017. *(See Labor Code section 925.)*

**Juvenile Criminal History (AB 1843):** AB 1843 prohibits employers from asking applicants to disclose, or from utilizing as a factor in determining any condition of employment, information concerning or 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. The bill makes an exception for employers at healthcare facilities, providing that these employers can inquire 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 sex crimes or...
certain controlled substances crimes within five years prior to applying for employment. However, these employers cannot inquire into an applicant’s sealed juvenile criminal records. (See Labor Code section 432.7.)

Unfair Immigration-Related Practices (SB 1001): SB 1001 makes it unlawful for an employer to do any of the following when verifying authorization to work: (1) request more or different documents than are required under federal law (under 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 upon the specific status or term of status that accompanies the authorization to work, or (4) reinvestigate or reverify an incumbent employee’s authorization to work using an unfair immigration-related practice. The bill authorizes applicants and employees to file a complaint with the DLSE and provides that a violation can subject employers to a penalty of up to $10,000. (See Labor Code section 1019.1.)

Sexual Harassment Training for Government Officials (AB 1661): AB 1661 requires local agency officials to receive sexual harassment prevention training and education if the local agency (including any city, county, city and county, charter city, charter county, charter city and county, or special district) provides any type of compensation, salary, or stipend to those officials. “Local agency officials” are any member of a local agency legislative body and any elected agency official. Additionally, local agencies will be allowed to require employees to receive sexual harassment prevention training or information. (See Government Code section 53237, et seq.)

Notice of Domestic Violence Protections (AB 2337): AB 2337 requires employers to inform in writing each new employee (and other employees upon request) of the rights afforded to employees affected by domestic violence. The Labor Commissioner is required to develop a notice form by July 1, 2017. Employers are not required to comply with the notice requirement until the Commissioner posts the form. (See Labor Code section 230.1.)

Wage statements for exempt employees (AB 2535): AB 2535 amends Labor Code 226 to clarify that employers are not required to list the number of hours worked on wage statements for employees exempt from payment of minimum wage and overtime under specified statutes or any applicable order of the Industrial Welfare Commission. (See Labor Code Section 226.)

Minimum Wage Violation Challenges (AB 2899): AB 2899 requires that, before appealing a Labor Commissioner decision relating to failure to pay minimum wages, employers must file a bond in favor of the unpaid employee in the amount equal to the unpaid wages, liquidated damages, and overtime compensation assessed, excluding penalties. The bill further provides that the proceeds of the bond, sufficient to cover the amount owed, are forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings. (See Labor Code section 1197.1.)

Amendments to Fair Pay Act (SB 1063 and AB 1676): AB 1676 amends the Fair Pay Act to prohibit employers from using an individual’s prior salary as the sole justification for any disparity in compensation. SB 1063 expands the Fair Pay Act’s gender pay equity protections to include race and ethnicity. It prohibits employers from paying employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work. (See Labor Code sections 1197.5 and 1199.5.)

Overtime for Agricultural Workers (AB 1066): AB 1066 removes Labor Code Section 551 and 552’s exemption for agricultural employees regarding hours, meal breaks, and other working conditions. It also creates new overtime requirements for agricultural workers that will gradually decrease, from 2019 until 2022, the daily and weekly hours that an agricultural worker must work to receive overtime pay. (See Labor
Code sections 554 and 857, et. seq.)

**Single-User Restrooms (AB 1732):** Effective March 1, 2017, all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency must be identified by signage as "all-gender" toilet facilities, rather than designated as male or female. These single-user toilet facilities also must be designated for use by no more than one occupant at a time or for family or assisted use. (See Health and Safety Code section 118600.)

**Private Pension (SB 1234):** SB 1234 enacts the California Secure Choice Retirement Savings Trust Act, which would create the California Secure Choice Retirement Savings Trust. It applies to private sector employers with five or more employees, that do not offer an employer-sponsored retirement plan. Such employers will be required to offer either an employer-sponsored retirement plan or a payroll deposit retirement savings arrangement so that eligible employees can contribute a portion of their salary or wages to a retirement savings program account in the California Secure Choice Retirement Savings Program. Each eligible employee shall be enrolled in the program unless the employee elects not to participate. (See Government Code sections 20139, 1000000, et seq.)

**Federal Overtime Rule:** The U.S. Department of Labor’s (DOL) final rule updating the Fair Labor Standards Act (“FLSA”) overtime regulations regarding the executive, administrative and professional exemptions goes into effect on December 1, 2016. The Final Rule: (1) sets the minimum salary level for FLSA White Collar Exemptions at $913 per week ($47,476 annualized); (2) sets the total compensation level for highly compensated employees (HCE) at $134,004 annually; (3) provides for automatic increases in the salary levels every three years (beginning January 1, 2020) – with the minimum salary level indexed to the 40th percentile of salaries for full-time workers in the lowest wage census region (currently the south region), and the HCE level indexed to the 90th percentile of salaries for national full-time salary workers; and (4) allows employers to count nondiscretionary bonuses and other incentive payments, including commissions, paid on at least a quarterly basis, for up to 10% of the minimum salary level. [Note that there have been legislative efforts to stall the Final Rule, including a bill passed by the House of Representatives. Also, unlike the federal rule, California does not have a HCE exemption.]

**Federal Contractor “Blacklisting” Rule:** A portion of the controversial federal “Blacklisting Rule,” which would have gone into effect October 25, 2016, has been enjoined by a federal district court. The enjoined portion of the rule would have required certain federal contractors to disclose alleged labor violations of 14 federal labor laws and equivalent state law for the past 3 years. However, the district court upheld the portion of the rule requiring that contractors improve paycheck transparency. This means that starting January 1, 2017, companies bidding on federal contracts for goods and services worth more than $500,000 must inform workers about their independent contractor status and provide other wage and benefit details.

**Federal Contractor Paid Sick Leave:** Beginning January 1, 2017, covered federal contractors will be required to provide employees with up to 56 hours of paid sick leave per year, pursuant to the Department of Labor’s final rule implementing Executive Order 13706. The Final Rule applies to new contracts and replacements for expiring contracts with the Federal Government that result from solicitations issued on or after January 1, 2017 (or that are awarded outside the solicitation process on or after January 1, 2017). It covers four major categories of contractual agreements: (1) procurement contracts for construction covered by the Davis-Bacon Act (DBA); (2) service contracts covered by the McNamara-O’Hara Service Contract Act (SCA); (3) concessions contracts; and (4) contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. Furthermore, any subcontract of a covered contract (like the upper-tier contract) that falls into one of these four categories is subject to the paid sick leave requirements.

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