Key employment bills were signed into law by Governor Jerry Brown at the close of the 2016-2017 legislative session. The bills take effect January 1, 2018, unless noted otherwise. Here’s what you need to know:

**Ban the Box (AB 1008):** AB 1008 follows the “ban the box” regulations promulgated in July 2017 and creates new state-wide restrictions on the use of criminal history in hiring decisions under the California’s Fair Employment and Housing Act (FEHA). AB 1008 restricts public and private employers’ ability to make pre-hire and other employment decisions based on an applicant’s or employee’s criminal history, including a “ban the box” element. The new law makes it unlawful for an employer with 5 or more employees:

1. to include on any application for employment any question that seeks the disclosure of an applicant’s conviction history,
2. to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer of employment, and,
3. when conducting a conviction history background check, to consider, distribute, or disseminate information related to specified prior arrests, diversions, and convictions.

Employers who intend to deny a position of employment solely or in part because of the applicant’s conviction history must make an individualized assessment of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job and provide the applicant with written notification of the decision under a specified procedure. Read our full summary here [/Publications/articles/2017-10-labor-new-hiring-rules]. (See Government Code section 12952.)

**Prohibition on Salary History Inquiries (AB 168):** AB 168 amends the California Labor Code to prohibit employers, including state and local governments, from seeking an applicant’s salary history information. The stated goal is to narrow the gender wage gap by preventing employers from relying on an applicant’s prior salary, compensation, and benefits as factors in determining whether to offer employment or what salary to offer. This new law also requires employers to provide
the position’s pay scale to applicants upon reasonable request. Read our full summary here/[Publications/articles/2017-10-labor-new-hiring-rules]. (See Labor Code section 432.3.)

Immigration Enforcement In the Workplace? (AB 450): AB 450 is designed to protect immigrant employees from worksite raids. Subject to exceptions required by federal law, AB 450 prohibits employers from allowing immigration enforcement agents to:

1. enter any nonpublic areas of a work place, absent a judicial warrant, or
2. access, review, or obtain employee records, without a subpoena or court order.

The law also requires employers to notify current employees and any authorized employee representative of any immigration agency inspection of I-9 Employment Eligibility Verification forms or other employment records (using a Labor Commissioner template), within 72 hours of receiving an inspection notice. Employers also must provide the results of such an inspection to current affected employees and any affected employee’s authorized representative. The law further prohibits employers from re-verifying the employment eligibility of a current employee at a time or in a manner not required by federal law. Penalties for violation of this law range from $2,000 to $5,000 for a first violation and from $5,000 to $10,000 for subsequent violations. (See Government Code sections 7285.1, 7285.2, 7285.3; Labor Code sections 90.2, 1019.2.)

Parental Leave for Small Business (SB 63): SB 63 expands the California Family Rights Act (CFRA) protections for baby bonding leave to small employers. The law requires employers with 20-49 employees to provide 12 weeks of baby bonding leave to eligible employees. The law applies to employees with more than 12 months of service with the employer, who have at least 1,250 hours of service with the employer during the previous 12-month period, and who work at a worksite in which the employer employs at least 20 employees within 75 miles. Employers also are prohibited from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave.

The law also authorizes the California Department of Fair Employment and Housing (DFEH) to create a parental leave mediation pilot program. Under the pilot program, within 60 days of receipt of a right-to-sue notice, an employer may request all parties to participate in the department’s Mediation Division Program. If the employer makes such a request, an employee is prohibited from pursuing any civil action under these provisions until the mediation is complete, which would include an employee’s election not to participate in mediation. The employee’s statute of limitations would be tolled during the course of the mediation. (See Government Code section 12945.6.)

Expanded Harassment Training To Cover Gender Identity, Gender Expression, and Sexual Orientation (SB 396): The California Fair Employment and Housing Act (FEHA) requires employers with 50 or more employees to provide training and education regarding sexual harassment to all supervisory employees. Under SB 396, this prescribed training must now include content addressing harassment based on gender identity, gender expression, and sexual orientation. Employers also must post a poster developed by the Department of Fair Employment and Housing regarding transgender rights. (See Government Code sections 12950, 12950.1; Unemployment Insurance Code sections 14005, 14012.)

Additional "Whistleblower" Retaliation Protections (SB 306): SB 306 authorizes the Labor Commissioner’s office, with or without receiving a complaint, to investigate an employer when it suspects retaliation or discrimination:

1. during the course of adjudicating a wage claim,
2. during a field inspection concerning labor standards, or
3. in instances of suspected immigration-related threats.

SB 306 also authorizes the Labor Commissioner or an employee to seek immediate injunctive relief from a court, upon a finding of "reasonable cause" that the law has been violated. The Labor Commissioner also may issue citations directing specific relief. (See Labor Code sections 98.7, 98.74, 1102.61, 1102.62.)

**Additional Employee Assistance After Acts of Domestic Terrorism (AB 44):** If employees are injured in an act of domestic terrorism, AB 44 requires employers to provide injured employees with immediate support from a nurse case manager, who will:

1. assist injured employees in obtaining medically necessary medical treatment; and
2. assist providers of medical services in seeking authorization of medical treatment.

These provisions apply only if the Governor declares a state of emergency in connection with the act of domestic terrorism. (See Labor Code section 4600.05.)

**New Laws for Public Employers**

**Wage Discrimination (AB 46):** The existing Fair Pay Act prohibits private employers from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex, or of a different race or ethnicity, for substantially similar work. AB 46 extends the Fair Pay Act prohibitions to public employers, by defining "employer" to include public and private employers. (See Labor Code section 1197.5.)

**Union Organizing (SB 285):** SB 285 prohibits public employers from "deterring or discouraging" public employees from becoming or remaining members of an employee organization. This law applies to counties, cities, districts, the state, schools, transit districts, the University of California, and the California State University, among others. The Public Employment Relations Board (PERB) has jurisdiction to enforce this law. (See Government Code sections 3550, 3551, 3552.)

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