CalChamber
HR Expert & Business Advocate™

2018 Midyear Employment Law Update

By Gail Cecchettini Whaley, J.D.;
CalChamber Senior Employment Law Counsel

Time flies when you're having fun — or when you're constantly having to abide by new laws and regulations. Before you know it, employers will be faced with new laws for 2019.

But we can't put 2018 in our rearview mirror just yet. It's been a busy year for employers, who have plenty of new developments to pay attention to. For updates to wage and hour, hiring and discrimination laws, to name just a few, read on.

Wage and Hour

California's wage and hour laws rank among the toughest in the nation and much has changed over the last seven months: There's a new test for independent contractors; an important ruling on off-the-clock work; a new intern test; and changes or clarifications to meal and rest break laws, exempt employees, joint employer liabilities and more.

New Test for Independent Contractors

The California Supreme Court issued a significant, and much-anticipated, decision on which test to apply when determining whether an individual is an employee or an independent contractor for purposes of the California Wage Orders — which cover the state's wage and hour laws (*Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018)).

Court rules: An independent contractor is a worker that meets each of the three-part ABC test.

The Court adopted a new three-factor test, known as the "ABC" test, which presumes workers are employees — not independent contractors — unless the company can prove that the worker:

- Is free from the hiring entity's control and direction in connection with the performance of the work — both contractually and in how the work is actually performed;
- Performs work that's outside the usual course of the hiring entity's business; and
- Is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

If the hiring entity fails to show that the individual worker satisfies each of the three criteria, **the worker is an employee.**

The California Supreme Court's decision to abandon the long-standing and flexible "right to control" test that had been in place since 1989 makes it much riskier to classify a

worker as an independent contractor. The Court's decision can be seen as part of a growing trend toward a more expansive definition of employer and employee — and greater liability for companies that contract for labor.

Employers who use independent contractors should consult with legal counsel and re-evaluate these workers under the new ABC test to determine if reclassification is necessary.

Small Amounts of Routine Off-the-Clock Work Must Be Counted

A Starbuck's employee who spent small amounts of time closing the store after he clocked out — an average of four minutes per shift — sued for unpaid wages.

In *Troester v. Starbucks*, the California Supreme Court held that California's Labor Code and wage orders have not adopted the federal *de minimis* rule that excuses payment for small amounts of time when the employer can show these amounts are administratively difficult to keep track of. California labor laws, according to the Court, don't allow employees to routinely work for minutes off the clock without being paid.

Whether some employee activities are so irregular or brief in duration that it's unreasonable to require employers to keep track of and pay for that time remains an open question.

Employers should review their practices for any tasks in which employees are engaging before clocking in or after clocking out (or any time the employee is under the employer's control). Employers who routinely have employees engage in tasks before or after the employees clock in and out for their scheduled shifts should ensure employees are compensated for all time — no matter how small the amounts may seem

New Intern Test

For years, a six-part test adopted by the U.S. Department of Labor (DOL) and followed by the California Division of Labor Standards Enforcement (DLSE) helped California employers determine whether an individual could be treated as an unpaid intern — but that test is on its way out the door.

An intern must be paid unless the primary beneficiary test is met.

In early 2018, the DOL abandoned the six-part test in favor of a new seven-factor "primary beneficiary" test, which looks at the "economic reality" of the intern/employer relationship to determine which party is the relationship's primary beneficiary — the employer or the individual.

The seven factors to consider are the extent to which the:

- Intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee — and vice versa.
- Internship provides training similar to that given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
- Internship is tied to the intern's formal education program by integrated coursework or receipt of academic credit.

- Internship accommodates the intern's academic commitments by corresponding to the academic calendar.
- Internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
- Intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- Intern and employer understand that the internship is conducted without entitlement to a paid job at the internship's conclusion.

"Intern" is a loosely used term, but for an individual to qualify for a non-paid internship, the above criteria must be used in analyzing the position. All factors will be weighed, and no single factor is determinative. Most "interns" will be considered employees under state and federal law, and you will need to comply with wage and hour laws, including paying them at least minimum wage.

Overtime and Flat-Sum Bonuses

Overtime pay in California is based on the employee's "regular rate of pay," which isn't always an employee's normal hourly wage and must include almost all forms of pay the employee receives. But how do you calculate the regular rate of pay when an employee receives both an hourly wage and a flat-sum bonus — such as an extra $15 for working a weekend shift?

The California Supreme Court issued a decision approving the DLSE's method for calculating overtime on nondiscretionary flat-sum bonuses: Divide the employee's bonus by the number of *nonovertime* hours an employee worked (not the total number of hours worked, including overtime). This method provides you with the flat-sum bonus' per-hour value to use in calculating the regular rate of pay (*Alvarado v. Dart Container Corporation of California*, 4 Cal.5th 542 (2018)).

Employers who want to give "extra pay" to hourly workers are wise to consult legal counsel.

Meal Breaks

A recent California case reaffirmed that employers must provide meal breaks, but thethey are **not** required to police whether employees are taking them (*Serrano v. Aerotek, Inc.*, 21 Cal.App.5th 773 (2018)).

If you use staffing agencies, assign responsibility for meal and rest break compliance and put it in writing.

A worker at a food production facility sued the facility, and the staffing agency that placed her there, for failure to provide a lawful meal period. Her time records showed she took late meal breaks on several occasions and no meal break on a couple of occasions, but she never claimed she was prevented from taking the breaks. The court found that the staffing agency met its obligation to provide a meal period under the California Supreme Court's *Brinker* decision because the agency had a compliant meal break policy; trained employees on the policy; required employees to notify the staffing agency if they were prevented from taking a meal break; and had an agreement requiring the worksite facility to comply with meal break laws.

The court reiterated the holding of *Brinker* — an employer's duty is to provide the proper meal period; it doesn't have to police the taking of the break.

This decision highlights the need to have a clear, written agreement between the staffing agency and the client as to who is responsible for wage and hour compliance, including meal and rest breaks. Use legal counsel to draft the agreement and consider any duty to defend or indemnification provisions with the attorney's advice.

Joint-Employer Liability

A gas station manager brought a class action lawsuit against Shell Oil alleging failure to pay certain wages owed and unfair business practices. Shell didn't actually operate the service station; Shell leased the station to A.R.S, who operated it.

A California appellate court held that Shell wasn't jointly liable as an employer for wage and hour claims brought by A.R.S.'s employees because Shell didn't exercise control over the worker's wages, hours or working conditions; didn't hire, supervise or pay the workers; didn't control the day-to-day manner in which work was performed; and couldn't fire the worker or hire someone else to do the worker's job (*Curry v. Equilon Enterprises*, LLC, 23 Cal.App.5th 289 (2018)).

Joint-employer claims in California continue to vex employers. Carefully review any agreements to supply labor with your legal counsel.

Exempt Employees

The U.S. Supreme Court held that car dealership service advisors are exempt from the Fair Labor Standards Act (FLSA) overtime pay requirement under an exemption for any "salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles …" (*Encino Motorcars, LLC v. Navarro*, 138 S. CT. 1134 (2018)). The Supreme Court overruled the Ninth Circuit, which had held that the FLSA exemption didn't include service advisors and the advisors were entitled to overtime pay. However, California wage and hour laws were not involved — only federal laws. California courts and enforcement agency generally construe the California Labor Code in favor of the workers.

If you are a car dealership in California, take time now to speak with legal counsel. Don't reclassify your service advisors to exempt and stop paying overtime before consultation!

PAGA Claims

The Private Attorneys General Act of 2004 (PAGA) authorizes individuals, also referred to as "aggrieved employees," to sue employers on behalf of a group of employees for California Labor Code violations and to recover civil penalties — two recent court decisions make it that much easier for an employee to bring a PAGA claim against an employer for a multitude of Labor Code violations.

Courts make it easier to bring PAGA claims against employers.

In one California case, the court held that an employee affected by at least one Labor Code violation can sue under PAGA to recover penalties for unrelated Labor Code violations by the same employer — even for violations that didn't affect the employee (*Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745 (2018)). In other words, the court concluded that under PAGA, an aggrieved employee can bring a lawsuit for any Labor Code violation, as long as that employee has suffered a single Labor Code violation of his/her own.

In another case, a California court decided that an employee doesn't have to prove injury or a knowing or intentional violation of the law to bring a PAGA claim for failure to provide accurate itemized wage statements required under Labor Code sec. 226(a) — even though an employee would have to prove both of these things if he/she was bringing the same claim on an individual, non-PAGA basis (*Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018)).

Hiring

In the hiring arena, significant decisions have addressed the use of salary history in hiring decisions and the scope of arbitration agreements — an agreement employers often ask employees to sign at the time of hire.

Never Consider Salary History in Employment Decisions

The Ninth Circuit Court of Appeal held that under the federal Equal Pay Act, prior salary, whether alone or in combination with other factors, can never justify a wage differential (*Rizo v. Yovino*, 887 F.3d 453 (9th Cir. 2018)).

The case challenged an employer's practice of determining employees' starting salaries based on what the person earned at their prior employment. In a strongly worded opinion, the court stated that "prior salary is not job related and it perpetuates the very gender-based assumptions about the value of work that the Equal Pay Act was designed to end." The holding in this case sets the law for all the states under the court's jurisdiction, including California.

Hiring managers should never use prior salary when determining whether to hire or how much to pay an applicant.

While decided under federal law, this case has implications for California employers. California employers are also required to follow federal law and thus should not consider prior salary.

And a new law for this year — Labor Code section 432.3 — bars employers from relying on an applicant's salary history when making hiring and salary decisions, and from asking applicants about their salary history. Moreover, recent clean-up legislation (AB 2282) provides that prior salary cannot be relied on to justify a pay differential. In light of these developments, you should **never consider an applicant's prior salary history.**

Train all employees involved in recruiting and interviewing that they shouldn't use prior salary when determining whether to hire or how much to pay an applicant. "How much do you make?" is a question of the past.

Arbitration Agreements and Class Action Waivers

The U.S. Supreme Court ruled that class action waivers contained in employment arbitration agreements are enforceable under the Federal Arbitration Act (FAA) and don't violate the National Labor Relations Act (*Epic Systems Corp. v. Lewis*, 138 S.Ct. 42 (2017)). The Court's ruling permits employers to enforce arbitration agreements requiring employees to only arbitrate claims in individual proceedings rather than class actions. However, under California law, an employer

can't have an arbitration provision that completely waives representative PAGA claims, which can continue to be brought on a representative basis, subject to further interpretation from the courts.

If you want to use arbitration agreements, consult legal counsel to help draft a compliant agreement.

Discrimination: National Origin

New Fair Employment and Housing Act regulations addressing national origin protections went into effect on July 1, 2018. The regulations protect both applicants and employees — including those who are undocumented.

Never base employment decisions on someone's actual or perceived national origin.

The new regulations expand existing national origin protections, broadly define the term "national origin," and specify the types of policies or practices that may constitute national origin discrimination. For example, the regulations discuss:

- Language restriction policies, such as English-Only policies;
- Accent discrimination;
- English proficiency requirements;
- Height and weight requirements and how they may disparately affect members of some national origin groups; and
- Unlawful immigration-related practices, such as inquiries into immigration status unless necessary to comply with federal law.

It's important to understand the broad definition of "national origin" under the new regulations — it includes not just an individual's national origin, but that of the person's spouse or those with whom the individual is associated. It also includes perceived national origin.

Never base employment decisions on an applicant's or employee's actual or perceived national origin. Ensuring that employment decisions, including hiring, are based on consistently applied objective criteria can help minimize the risk of potential discrimination claims.

Workplace Safety

Protecting and improving the health and safety of workers in the Golden State is no small task — and it's the primary mission of the California Division of Occupational Safety and Health (known as Cal/OSHA) and the federal Occupational Safety and Health Administration (OSHA). Employers need to stay up to date on their compliance obligations or face stiff consequences.

Consequences for Violating Safety Rules

When an employer violates California workplace safety rules, Cal/OSHA can seek various administrative penalties. If the violation is willful and involves a worker's death or permanent

impairment, administrative fines can end up in the millions of dollars. Cal/OSHA also can refer matters to the local district attorney (DA) for prosecution, and criminal penalties of up to three years' imprisonment are on the table.

And now, employers also can face a civil lawsuit for unfair business practices, according to a ruling from the California Supreme Court involving a water heater explosion (*Solus Industrial Innovations, LLC v. Superior Court*, 4 Cal.5th 316 (2018), *petition for certiorari pending*).

Closely follow all Cal/OSHA standards to protect your workers and avoid liability.

A plastics manufacturer used a water heater designed for residential use at its facility — and when the water heater exploded, it killed two workers. Cal/OSHA charged the company with regulatory violations and willful violation. The local DA's office also filed felony criminal charges. What's unique is that the DA also brought a civil lawsuit claiming that the company's actions amounted to unfair competition, and its false and misleading representations about its commitment to workplace safety enabled it to retain employees and customers in violation of fair advertising laws.

This case stresses the importance of closely following all Cal/OSHA standards to protect your workers and avoid liability on multiple fronts.

Health Care Facilities

Cal/OSHA requires specified covered health care facilities to establish workplace violence prevention plans to protect health care workers and other facility personnel from aggressive and violent behavior. By April 1, 2018, a covered employer must have established a workplace violence prevention plan that meets specific requirements. The workplace violence prevention plan must be part of the employer's Injury and Illness Prevention Program (IIPP).

Employers must also provide all necessary personal protective equipment and training on workplace violence as part of the employer's IIPP. The requirements for employee training must also have been implemented by April 1, 2018.

Hotel Housekeepers

A new workplace safety and health regulation specific to housekeepers in the hotel and hospitality industry became effective July 1, 2018. This new regulation, which is enforced by Cal/OSHA, is the first ergonomic standard in the nation written specifically to protect hotel housekeepers from musculoskeletal injuries.

Under the new rule, covered employers are required to have a specific Musculoskeletal Injury Prevention Program that must include:

- Procedures to identify and evaluate housekeeping hazards through worksite evaluations;
- Procedures to investigate musculoskeletal injuries to housekeepers;
- Methods to correct identified hazards; and

- Training of employees and supervisors on safe practices and controls, and a process for early reporting of injuries to the employer.

When evaluating worksite hazards, investigating injuries and identifying corrective measures, input from the housekeepers and their union representatives is required.

California wrote the first ergonomic standard in the nation to protect hotel housekeepers from musculoskeletal injuries.

Laws from Last Year

The following laws were passed in prior years but didn't go into effect until July 1, 2018.

Workers' Compensation: SB 189 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.

Janitorial Employers: Legislation enacted to protect janitorial workers from sexual violence, harassment and wage theft requires that beginning July 1, 2018, janitorial employers must register annually with the Labor Commissioner. A covered employer provides janitorial services with at least one employee and one janitor. The Labor Commissioner's Office has an online registration system, and failure to register by October 1, 2018, may result in a civil fine. Additionally, covered janitorial employers must provide employees with the Department of Fair Employment and Housing's sexual harassment prevention pamphlet. The pamphlet must be provided until the DLSE establishes a biennial, in-person sexual violence and harassment prevention training for janitorial employees and employers (it has until January 1, 2019, to do so).

Local Ordinances

Another thing to keep in mind is that several localities had minimum wage increases and other changes for July 1. Keeping track of applicable local ordinances is an ongoing HR challenge.

The following cities and county increased their local minimum wages on July 1 (eligibility rules may vary based on different locations):

- Emeryville;
- City of Los Angeles;
- County of Los Angeles (unincorporated areas only);
- Malibu;
- Milpitas;
- Pasadena;
- San Francisco;

- San Leandro; and
- Santa Monica.

The city of Belmont also enacted a new minimum wage ordinance that went into effect July 1, 2018, and Redwood City enacted a minimum wage ordinance that goes into effect on January 1, 2019.

New San Francisco Salary History Ordinance

In addition to San Francisco's minimum wage rate increase, San Francisco's new Consideration of Salary History Ordinance became effective on July 1, 2018. Under the ordinance, employers will be banned from considering the current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant.

v08082018

CalChamber
HR Expert & Business Advocate™

An Overview of New 2018 Laws Affecting California Employers

By: Gail Cecchettini Whaley, J.D.;
CalChamber Senior Employment Law Counsel

In 2017, California enacted new employment laws that may affect your business's day-to-day operations in 2018 and beyond.

Employers must be aware of significant changes in key areas, such as a small business parental leave law and new hiring restrictions. Other new laws make small changes to different parts of existing law or may only affect employers in specific industries.

Unless specified, all new legislation goes into effect on **January 1, 2018**.

For information regarding CalChamber's advocacy efforts this legislative session, visit CalChamber's Alert.

This white paper identifies some of the noteworthy new laws from the California Legislature. For a full discussion of the new 2018 employment laws, CalChamber members can visit *HRCalifornia Extra*'s New Employment Laws for 2018.

Employers must be aware of significant changes in key areas, such as a small business parental leave law and new hiring restrictions.

Parental Leave for Small Employers

An important new law requires that small employers provide new parents with up to 12 workweeks of unpaid leave.

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 — leave that must be taken within one year of the child's birth, adoption or foster care placement. SB 63 requires employers to provide parental leave only for baby bonding; it does not require employers to provide leave for other reasons, such as a family member's medical issue.

The New Parent Leave Act 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*.

Employers can be sued if they don't comply with provisions of the Act.

Hiring Practices and Enforcement

Employers will see significant changes to their hiring practices in 2018, including applicant selection processes and compliance with *Form I-9* and immigration laws.

Ban-the-Box Law

AB 1008 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, before denying employment because of a criminal conviction, these specific steps must be followed:

- The employer must first conduct an individualized assessment to determine whether the conviction has a direct and adverse relationship with the job's specific duties that justifies denying employment.
- 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 for this step must be followed. The employer must consider any information provided by the applicant before making a final decision.
- Any final decision to deny employment because of the criminal conviction requires another specific written notice to the applicant.

Employers can no longer ask applicants about prior salary.

No More Salary History Questions

AB 168 bans employers from asking about a job applicant's prior salary, compensation or benefits (either directly or through an agent, such as a third-party recruiter).

In addition, employers cannot rely 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) provides workers with protection from immigration enforcement while on the job and imposes varying fines from $2,000 to $10,000 for violating its provisions.

A new law provides California workers with protection from immigration enforcement while on the job.

AB 450's provisions include the following:

- Employers cannot give federal immigration enforcement agents access to non-public areas of a business without a judicial warrant.
- Employers cannot provide these enforcement 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.
- Employers must follow specific requirements related to *Form I-9* inspections. Those requirements are 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 the Notice of Inspection. This notice must also be given to the collective bargaining representative, if any.
  - » Provide a copy of the Notice of Inspection to an affected employee upon reasonable request.
  - » Once the inspection is over, provide 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. An "affected employee" is one identified by the inspection results as potentially lacking work authorization or having document deficiencies.

This bill also makes it unlawful for employers to reverify the employment eligibility of current employees in a time or manner not allowed by federal employment eligibility verification laws.

Alcohol Servers

AB 1221 requires that businesses licensed to serve alcohol make sure each alcohol server receives mandatory training on alcohol responsibility and obtains an alcohol server certification. These requirements go into effect in 2021, after the course is developed by the Department of Alcoholic Beverage Control.

Discrimination, Harassment and Retaliation Protections

Several new laws expand employee protections for 2018. Many of these laws focus on gender equality and gender identity/gender expression 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.

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 must be provided to receive a farm labor contractor's license. The bill now requires that training be conducted or interpreted into a language understood by the employee, and that the Labor Commissioner receive a list of harassment prevention training materials used and the number of individuals trained.

Anti-discrimination protections continue to expand.

Gender Identification: Female, Male or Nonbinary

SB 179 will allow California residents to choose from three equally recognized gender options — female, male or nonbinary — on state-issued identification cards, birth certificates and 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 on January 1, 2019.

The bill also makes it easier for individuals to change their gender on legal documents, effective on September 1, 2018.

Employment Discrimination: Gender Neutral Language

AB 1556 revises California's Fair Employment and Housing Act 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."

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.

Data Collection: Sexual Orientation

AB 677 requires that, beginning no later than July 1, 2019, various state labor agencies collect voluntary, self-identified information pertaining to sexual orientation and gender identity in the regular course of collecting other types of demographic data.

LGBT Rights for Long-Term Care Facility Residents

SB 219 enacts the Lesbian, Gay, Bisexual, and Transgender (LGBT) Long-Term Care Facility Residents' Bill of Rights, strengthening anti-discrimination protections for LGBT individuals living in long-term care facilities. Among other things, SB 219 makes it unlawful to willfully and repeatedly fail to use a resident's preferred name or pronoun or to deny admission to a long-term care facility because of gender identity or sexual orientation. Facilities are required to post a notice about the protections and follow recordkeeping requirements.

Employer notice requirements will change as a result of new laws.

Human Trafficking

AB 260 extends the list of businesses that must post a human trafficking information notice to include hotels, motels and bed and breakfast inns.

Meanwhile, SB 225 requires the human trafficking notice to include a new number for those who wish to send text messages. Businesses are not required to post the updated notice until on or after January 1, 2019.

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 in civilian jobs from hostile work environments.

Health Facilities: Whistleblower Protections

AB 1102 increases the maximum fine for a violation of whistleblower protections in healthcare facilities from $20,000 to $75,000.

Wage and Hour

A few new California laws affect employers' wage-and-hour obligations in 2018, some of which are related to enforcement.

Keep in mind that 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. To learn more, download the *2018 Minimum Wage Hike Brings Changes for California Employers* white paper (nonmember download).

And remember to determine whether any local minimum wage ordinances apply to your business.

Labor Law Enforcement, Retaliation

SB 306 allows the Labor Commissioner to 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. The Labor Commissioner also can obtain a court order prohibiting an employer from firing or disciplining an employee, even before completing its investigation or determining retaliation has occurred. SB 306 also creates a new citation process for alleged violations and penalties.

Remember to determine whether any local minimum wage ordinances apply to your business.

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.

Barbering and Cosmetology

Two new laws affect barbering and cosmetology employers and licensees.

SB 490 allows workers licensed under the Barbering and Cosmetology Act to be paid a commission in addition to a base hourly rate if certain conditions are met.

AB 326 requires Board of Barbering and Cosmetology schools to include information on physical and sexual assault awareness in the required health and safety course for licensees beginning July 1, 2019.

Workplace Safety and Workers' Compensation

SB 258 relates to the safety of designated cleaning products, including general cleaning, air care, automotive, or polish or floor maintenance products used primarily for janitorial, industrial or domestic cleaning purposes. Provisions of SB 258 state that:

- Manufacturers of the designated cleaning products must disclose the chemicals in those products and create product safety data sheets; and
- Employers that have these designated cleaning products in their workplace must obtain the safety data sheets from the manufacturers and make them available at the workplace.

As for workers' compensation, several bills were signed into law for 2018.

AB 44 requires employers to provide a nurse case manager to advocate for employees injured during the course of employment by an act of domestic terrorism, but only when the governor has declared a state of emergency. The Division of Workers' Compensation will adopt regulations on the scope of the employer's obligations and the contents of a required notice.

SB 189, which is effective on 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.

AB 1422 extends the automatic stay on liens filed by medical providers who are charged with criminal fraud.

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

v11132017