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Client Alert

November 16, 2017

Key New California Laws for 2018: What Employers Should Know

By Pascal Benyamini

Governor Jerry Brown signed several laws in 2017 that will impact California employers next year. A summary of some of the key new laws follows, in numerical order by Assembly Bill (AB) and/or Senate Bill (SB). All of the laws outlined below are effective beginning **January 1, 2018**.

Initially, employers should bear in mind that the minimum wage in California is increasing to $11.00 per hour on January 1, 2018, for employers with 26 or more employees, based on previous legislation signed by Governor Brown in 2015. The minimum wage for employers with 25 or fewer employees will increase to $10.50 per hour on January 1, 2018. Also, please note that various cities and local governments in California have enacted minimum wage ordinances that exceed the state minimum wage.

AB 168 – Salary Information

AB 168 prohibits employers from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant. This bill also prohibits employers from seeking salary history information about an applicant for employment and would require an employer, upon reasonable request, to provide the pay scale for a position to an applicant for employment. This said, if an applicant voluntarily discloses salary history information, employers are not prohibited from considering or relying on that voluntarily disclosed salary history information in determining salary.

This bill adds Section 432.3 to the Labor Code.

AB 450 – Immigration Worksite Enforcement Actions

Except as otherwise required by federal law, AB 450 prohibits employers from providing voluntary consent to immigration enforcement agents (1) to enter nonpublic areas of a workplace, unless the agent provides a judicial warrant, and (2) to access, review or obtain employee records without a subpoena or court order. This restriction does not apply to I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer.

Under this bill, an employer must post a notice to current employees within 72 hours of receiving federal Notice of Inspection that the federal agency will be inspecting I-9 forms or other employer records. The posting by the employer must be in the language the employer normally uses to communicate employment-related information to employees.

Moreover, employers are prohibited from re-verifying the employment eligibility of current employees at a time or in a manner not required by specified federal law.

This bill provides the Labor Commissioner or the Attorney General the exclusive authority to enforce these provisions and would require that any penalty recovered be deposited in the Labor Enforcement and Compliance Fund. Employers are subject to various penalties for non-compliance.

This bill adds Sections 7285.1, 7285.2 and 7285.3 to the Government Code, and Sections 90.2 and 1019.2 to the Labor Code.

AB 1008 – "Ban The Box"

AB 1008 makes it unlawful under the Fair Employment and Housing Act (FEHA) for most employers with five or more employees (1) to include on any application for employment any question that seeks the disclosure of an applicant's conviction history and (2) to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer. Further, when conducting a conviction history background check, this bill prohibits employers from considering, distributing or disseminating information related to specified prior arrests, diversions and convictions.

This bill also requires any employer who intends to deny an applicant a position of employment because of the applicant's conviction history to 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 to consider the following in its assessment: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense or conduct and completion of the sentence; and (3) the nature of the job held or sought.

An employer who makes a preliminary decision to deny employment based on that individualized assessment is required to provide the applicant written notification of the decision, which shall contain all of the following: (1) notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer; (2) a copy of the conviction history report, if any; and (3) an explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances or both.

Applicants are provided five business days to respond to the employer's notification before the employer may make a final decision. If the applicant notifies the employer in writing that he or she disputes the accuracy of the conviction history and is obtaining evidence to support that assertion, the applicant is provided an additional five business days to respond to the employer's notice.

This bill adds Section 12952 to the Government Code and repeals Section 432.9 of the Labor Code.

SB 63 – Parental Leave

SB 63 applies to employers who have 20–49 employees. Under this bill, employees who have more than 12 months of service with their employer, at least 1,250 hours of service with their employer during the previous 12-month period, and who work at a worksite in which their employer employs at least 20 employees within a 75-mile radius, are entitled to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption or foster care placement.

SB 63 requires employers to maintain and pay for coverage under a group health plan for an employee who takes this leave under the same terms and conditions that coverage would have been provided if the employee had continued to work in his or her position for the duration of the leave. Employers may recoup coverage costs if both of the following conditions occur: (1) the employee fails to return from leave after the period of leave to which the employee is entitled has expired; and (2) the failure of the employee to return from leave is for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the control of the employee.

This bill also prohibits employers from refusing to hire, or from discharging, fining, suspending, expelling or discriminating against, any employee for exercising his or her right to parental leave, or giving information or testimony as to his or her own parental leave, or another person's parental leave, in an inquiry or proceeding related to rights guaranteed under this bill.

This bill adds Section 12945.6 to the Government Code.

SB 306 – Retaliation Actions

SB 306 authorizes the Division of Labor Standards Enforcement (DLSE or Labor Commissioner) to commence an investigation of an employer, with or without a complaint being filed, when specified retaliation or discrimination is suspected during the course of adjudicating a wage claim, during a field inspection or in instances of suspected immigration-related threats. Should the Labor Commissioner find reasonable cause to believe that any employer has engaged in or is engaging in a violation of this new law, this bill authorizes the Labor Commissioner to petition a superior court for prescribed injunctive relief. That said, an employer is not prohibited from disciplining or terminating an employee for conduct that is unrelated to the claim of the retaliation.

This bill also authorizes the Labor Commissioner to issue citations directing specific relief to persons determined to be responsible for violations and subjects employers who willfully refuse to comply with a final order to pay civil penalties to the affected employee.

Finally, should an employee commence civil action, this bill authorizes the employee to also seek injunctive relief from the superior court. Should injunctive relief be granted, such order is not stayed pending appeal.

This bill amends Section 98.7 of the Labor Code and adds Sections 98.74, 1102.61 and 1102.62 to the Labor Code.

SB 396 – Anti-Sexual Harassment Training: Gender Identity, Gender Expression and Sexual Orientation

By way of background, existing law requires all California employers with 50 or more employees to provide two hours of sexual harassment prevention and anti-bullying training to their supervisors and managers every two years. This training and education must be provided to supervisors within six months of the time they become supervisors and then at least once every two years.

SB 396 requires covered employers to include training and education of harassment based on gender identity, gender expression and sexual orientation. Further, the training and education shall include practical examples of harassment based on gender identity, gender expression and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

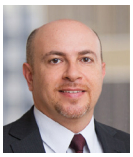
This bill also requires all employers to post a poster developed by the Department of Fair Employment and Housing regarding transgender rights in a prominent and accessible location in the workplace.

This Bill amends Sections 12950 and 12950.1 of the Government Code and Sections 14005 and 14012 of the Unemployment Insurance Code.

The foregoing new laws will require employers to revise their policies and procedures. Accordingly, employers should ensure their policies are compliant and their employee handbooks are up to date.

Labor and Employment Team

Primary Contacts



Pascal Benyamini
Partner
Los Angeles
(310) 203-4050
pascal.benyamini@dbr.com