

California Employment Law Legislative Update

SEPTEMBER 29, 2015

In the final few weeks of its term, the California legislature passed a number of employment-related bills that have implications for companies with California employees. The following is a brief overview of recent California employment-related legislation that now awaits Governor Brown's signature. The governor has until October 11, 2015 to sign or veto the following measures.

New Legislation Pending Signature

SB 588 – Nonpayment of Wages: Labor Commissioner: Judgment Enforcement

This bill would enact special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in California. The bill would authorize the Labor Commissioner to use any of the existing remedies available to a judgment creditor against an employer for nonpayment of wages. For example, the Labor Commissioner would have the power to assess a lien or levy against an employer that fails to pay wages owed under a final court judgment. An employer failing to pay wages within 10 days of the levy would be required to stop operations or to secure a surety bond of \$50,000 to \$150,000 (depending on the size of the unpaid judgment).

AB 465 – Contracts Against Public Policy

This bill would enjoin employers from asking employees to sign arbitration agreements as a condition of employment, unless an employee is individually represented by legal counsel. This bill *directly* contradicts recent case law from the California Supreme Court, which upholds the enforceability of employment arbitration agreements, and likely impermissibly conflicts with the Federal Arbitration Act.

AB 621 – Motor Carrier Employer Amnesty Program

This bill would provide amnesty to trucking companies for misclassifying commercial drivers as independent contractors if they enter into a settlement with the Labor Commissioner prior to January 1, 2017, agree to convert the drivers to employees, and pay all wages, benefits, and taxes owed.

AB 622 – E-Verify System

This bill would expand the definition of “unlawful employment practice,” under existing laws, which prohibit employers from engaging in unfair immigration-related practices, to prohibit an employer or any other person from using the E-Verify system for any purpose other than to check the status of an existing employee or an applicant who has not yet received an offer of employment, as required by federal law.

AB 676 – Employment Discrimination for Unemployed Status

This bill would prohibit employers from publishing advertisements or job announcements that state or indicate that an unemployed person is not eligible for the job, and would prohibit employers from asking applicants to disclose their employment status.

AB 897 – Grocery Workers

This bill would require successor grocery store employers to hire from existing grocery store workers during the 90-day transition period after an acquisition.

AB 970 – Enforcement of Employee Claims

This bill would expand the Labor Commissioner’s existing authority to investigate and to enforce local wage laws in cities and counties, by allowing it to issue citations and penalties for violations of local overtime and minimum wage provisions. The Labor Commissioner would be precluded from issuing a violation if the local entity has already issued a citation for the same violation, and vice versa.

AB 1017 – Salary History

In a stated attempt to address gender pay gaps, this bill would prohibit employers from seeking an applicant’s salary history for the purpose of setting the applicant’s pay at the new position.

SB 358 – Conditions of Employment: Gender Wage Differential

This bill would revise existing law, which currently prohibits employers from paying less to an employee of the opposite sex in the same establishment for equal work. This bill would eliminate the requirement that the employees be within the same establishment and instead, would prohibit employers from paying any employee less, than an opposite sex employee for “substantially similar” work. Also, employers would be required to demonstrate that wage differentials are based on a seniority, merit, or productivity system, or on a bona fide factor other than sex. For more information regarding SB 358, please see our prior client alert available [here](#).

SB 406 – Expansions to the California Family Rights Act

This bill would expand the definition of “child” under the California Family Rights Act (CFRA) to include the children of domestic partners and persons for whom an employee stands *in loco parentis*. It would also remove the age limitation on the definition of “child,” which currently limits the definition to persons under 18 years old, and would remove the dependent status restrictions on the definition of “child.” The bill would additionally expand CFRA leave to allow employees to take leave for the serious health condition of a grandparent, grandchild, sibling or domestic partner. Finally, this bill would remove the current provision that allows employers to limit CFRA leave to 12 weeks when both parents are employed by the same employer for the birth, adoption, or foster care placement of a child.

SB 703 – Public Contracts: Prohibitions: Discrimination

This bill would prohibit state agencies from entering into contracts with vendors for \$100,000 or more who have employee health plans that discriminate on the basis of gender identity.

Recent Enacted Legislation

SB 600 – Discrimination: citizenship: language: immigration status.

In September, Governor Brown signed SB 600 into law. This legislation expands the protections under the Unruh Civil Rights Act to persons regardless of citizenship, primary language, or immigration status. The Unruh Civil Rights Act previously provided that all persons within the jurisdiction of California are entitled to full and equal accommodations in all business establishments regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation. While the Unruh Act is intended to protect consumers—not employees—from arbitrary discrimination by both public and private business, employers are advised to ensure compliance by training employees on duties not to discriminate against customers on the basis of any classification protected under the Unruh Act.

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