

# 2016 Labor Law Update

**L**EGISLATIVE AND REGULATORY CHANGES AND IMPORTANT COURT DECISIONS during this last year made significant changes for employers. Beginning with State Laws, a notice of some of the most important ones you need to know to prepare for this year.

## LABOR LAW CHANGES

### Minimum Wage Increases

The minimum wage increases on January 1, 2016, to \$10 per hour.

## LEAVES OF ABSENCE AND BENEFITS

### Paid Sick Leave - AB 304

Last year, the Healthy Workplaces, Healthy Families Act became law and required employers to begin providing the mandatory paid sick leave (PSL) benefit beginning July 1, 2015. AB 304 which made several substantial amendments effective on July 13, 2015.

#### Among other things, the amendments:

- Clarify who is a covered worker;
- Provide alternative accrual methods other than one hour for every 30 hours worked;
- Clarify protections for employers that already provided PSL or paid time off before January 1, 2015 (a grandfather clause); and
- Provide alternative methods for paying employees who use PSL.

### Kin Care Amended - SB 579

Makes technical amendments to California's "kin care" law to conform to the mandatory paid sick leave (PSL). It allows employees to use kin care for the same purposes specified by the PSL law and defines "family member" under the kin care law the same as under PSL.

### School Activities Leave - SB 579

SB 579 expands Labor Code section 230.8 which requires an employer who employs 25 or more employees to provide an employee up to 40 hours each year and no more than eight hours in a calendar month for the purpose of participating in school activities, including activities at child care facilities.

The revised law:

Expands the reasons for which an employee can take time off beyond school activities to allow employees time off to find a school or a licensed child care provider and to enroll or re-enroll a child and time off to address child care provider or school emergencies.

Expands the time off protections to cover employees who are stepparents, foster parents, or stand in loco parentis to a child. Existing law already covers grandparents, but the revision eliminates the requirement that grandparents have custody. Broadly refers to "licensed child care providers," instead of child care facilities.

### National Guard Leave and Protections

AB 583 expands the list of employees eligible for California's military leave protections, such as return rights and other job protections. AB 583 extends the current law's protections to members of the National Guard of other states who have left a position in private employment in California.

### Unemployment Insurance and Electronic Reporting

AB 1245 requires electronic reporting for unemployment insurance reports submitted to the Employment Development Department. It also requires employers to remit contributions for unemployment insurance premiums by electronic funds transfer. The requirements will apply to employers with 10 or more employees beginning January 1, 2017, and to all employers beginning January 1, 2018.

### State Disability Insurance Eligibility: Waiting Periods

SB 667 changes the eligibility waiting period requirements when an individual files a second disability claim for the same or related condition as his/her initial claim. SB 667 also extends the time between claims that will be considered one disability benefit period. This law is effective July 1, 2016.

### Unemployment Insurance: Training Benefits

AB 1514 makes changes related to eligibility for unemployment insurance benefits during a period when the individual is taking specified training or retraining.

## DISCRIMINATION AND RETALIATION PROTECTIONS

### Gender Equity Pay Act. SB358 Gender Wage Equality

SB 358 (Fair Pay Act) revises Labor Code section 1197.5, which deals with gender pay inequality or disparity. Under existing California law, employers cannot pay an employee less than the rate paid to an opposite-sex employee in the same establishment for equal work on jobs that require equal skill, effort and responsibility, and could face a lawsuit for such disparity.

The Fair Pay Act revises and expands this prohibition. It eliminates the requirement that the pay difference be "within the same establishment" and eliminates use of the terms "equal work" for "equal skill, effort, and responsibility." Instead, SB 358 prohibits an employer from paying any of its employees less than employees of the opposite sex for "substantially similar work, when viewed as a composite of skill, effort and responsibility." In addition, the legislation places specific requirements on employers to affirmatively show that any wage differential is not unlawful but is instead based entirely and reasonably upon one or more of the acceptable listed factors, including seniority and merit systems or other

bona fide factors coupled with a showing of "business necessity," as defined.

The Fair Pay Act prohibits employers from terminating, discriminating or retaliating against an employee who exercises his/her rights under the Act or assists others in exercising their rights. Employers also can't prohibit employees from disclosing their wages, discussing the wages of others or asking about another employee's wages. The Act does not obligate anyone to disclose wages when asked.

It's important to remember that the ability of employees to discuss wages is already protected by other existing state and federal laws, even though the Fair Pay Act also includes this same protection.

This law creates a private right of action for retaliation and discrimination.

### Whistleblower and Anti-Retaliation Protections

AB 1509 expands whistleblower and anti-retaliation protections to prohibit employers from retaliating against an employee when his/her family member engages in whistleblowing or other described protected activity, such as complaining of wage theft or unsafe working conditions.

AB 1509 also expands joint employer liability by changing the definition of employer under these anti-retaliation laws to include "client employers" — a specific definition related to companies who contract for labor.

### Reasonable Accommodation and Retaliation

AB 987 clarifies that an employer can't retaliate or discriminate against an employee for requesting a reasonable accommodation for a disability or religion, regardless of whether the request was granted. The law clarifies that the mere act of making the request is protected conduct under the Fair Employment and Housing Act.

### Immigration-Related Protections

AB 560 adds additional protection for child workers to clarify that their immigration status is not relevant to the issue of whether their employer violated the law or to what remedies are available to the worker.

### State Contracts

SB 703 amends existing law to prohibit the state from entering into contracts for goods or services of \$100,000 or more with a contractor that discriminates on the basis of gender identity, such as being transgender, when providing benefits.

## WAGE AND HOUR

### Piece-Rate Workers AB 1513

AB 1513 sets forth new rules for employers with piece-rate employees. The law requires employers to pay piece rate workers for rest and recovery periods and other non-productive time at specified minimum hourly rates, separate from the piece-rate compensation.

AB 1513 mandates that specific information, such as the total hours of compensable rest and recovery periods, must now be included on a piece-rate employee's itemized wage statement (pay stub).

AB 1513 also contains a "safe harbor" provision for employers who, in the past, may not have properly paid piece-rate workers for rest and recovery periods or non-productive time and face liability. Employers who want to take advantage of the safe harbor provision will need to meet the statutory requirements by December 15, 2016.

### Wage Theft SB 588

SB 588 makes several changes to the Labor Code and expands the Labor Commissioner's ability to enforce laws.

In order to enforce a judgment for nonpayment of wages, SB 588 allows the Labor Commissioner to issue levies and liens on employer property and to issue "stop orders" — preventing the employer from continuing to conduct business in the state.

SB 588 also specifies that an individual acting on behalf of the employer can be personally liable for violating certain provisions of the Labor Code.

SB 588 further provides for joint and several liability for unpaid wages in the property-services and long-term care industries when judgments are not satisfied.

### Meal Break Waivers - SB 327

SB 327 reaffirms that the Wage Orders which allow for a specific meal period waiver in the health care industry are still in effect. Employers in the health care industry can continue to allow employees to voluntarily waive one of their two meal periods, even when an employee's shift exceeds 12 hours (Wage Orders 4 and 5). Effective October 5, 2015.

### Wage Garnishment - SB 501

SB 501 reduces the prohibited amount of weekly disposable earnings that may be garnished pursuant to a withholding order. It limits the garnishment to an amount not to exceed the lesser of 25% of the employee's disposable income, or 50% of an amount 40 times the local or state minimum wage. This amendment is effective July 1, 2016.

### Labor Commissioner Authority Expanded AB 970

AB 970 allows the Labor Commissioner to now investigate and enforce local overtime and minimum

wage laws, such as the local minimum wage ordinances enacted by many cities. AB 970 also gives the Labor Commissioner new authority to issue citations and penalties when employers fail to reimburse employees for employer-required expenses.

### Private Attorneys General Act of 2004. AB 1506

AB 1506 amends the Private Attorneys General Act (PAGA) to allow employers a limited right to correct (or "cure") two types of itemized wage statement violations before an employee may bring a civil action under PAGA. An employer will now be allowed to correct violations involving: (1) a failure to provide employees with an itemized wage statement that contains the inclusive dates of the pay period; or (2) a failure to provide employees with an itemized wage statement that contains the name and address of the legal entity.

### Misclassification Amnesty for Motor Carriers

AB 621 establishes the Motor Carrier Employer Amnesty Program for port transportation companies (also known as port drayage companies). The amnesty program allows motor carrier companies to avoid liability for misclassification of drivers as independent contractors if the companies voluntarily enter into settlement agreements with the Labor Commissioner by January 1, 2017.

### PUBLIC WORKS / PREVAILING WAGES - AB 327 & 852

Employers who provide services or construction work on public works projects for the government or public-sector entities must pay the prevailing wage, which is usually significantly higher than the minimum wage.

**AB 219** Expands the definition of public works and therefore the mandate of prevailing wages to include the delivery of ready-mix concrete to public contracts.

## HIRING

### Unlawful Use of E-Verify AB622

AB 622 prohibits employers from using the federal E-Verify system at a time or in a manner not required by federal law to check the employment authorization status of an existing employee or of an applicant who has not received an offer of employment.

Employers can still use E-Verify, in accordance with federal law, to check the employment authorization status of a person who has been offered employment.

AB 622 also requires employers who use E-Verify to comply with specific employee notification requirements when they receive notice from a federal agency that the submitted E-Verify information does not match federal records. **Penalty of \$10,000 for each violation.**

### Grocery Store Workers: Retention - AB359

AB 359 extends job protections to grocery store workers when a grocery store changes ownership — requiring the successor owner to retain grocery workers employed by the previous owner for a specific period of

time. 90 days, potentially under the terms of a collective bargaining agreement to which the successor employer was not a party, and then forces the successor employer to consider offering continued employment to such employees beyond the 90 days unless the employee's performance was unsatisfactory.

### Professional Cheerleaders AB202

AB 202 requires that California-based professional sports teams classify cheerleaders as employees, not independent contractors, when the cheerleaders are used by the team during its exhibitions, events or games.

### MINIMUM WAGE

California's current minimum wage is \$10 per hour effective January 1, 2016.

**REMEMBER --** The increase will directly impact non-exempt minimum wage hourly workers. However, it also affects lower-salaried exempt employees and other groups of non-exempt employees. Review compensation plans to ensure they continue to comply with laws impacted by the minimum wage.

### The key areas are:

- Exempt Employees
- Inside Salesperson - Commission Exemption
- Tools or Equipment
- Calculation of Split Shift Premiums
- Collective Bargaining Agreements
- Voluntary Crediting Agreements

### IRS MILEAGE REIMBURSEMENT RATE:

Beginning January 1, 2016, the recommended IRS reimbursement rate for business miles driven is reduced by 3.5 cents to 54 cents per mile.

### PHYSICIANS-SURGEONS OVERTIME EXEMPT RATE:

Effective January 1, 2016, the hourly rate is \$76.24

### COMPUTER PROFESSIONAL O/T EXEMPT RATE:

Effective January 1, 2016 the hourly rate is \$41.85, the minimum monthly salary is \$7,265.43 and the annual salary is \$87,185

### OTHER SECTION 510 EXEMPTED CAREERS

Private elementary and secondary teachers also get unique treatment. Under Section 515.8(b)(3), if a private school teacher earns less than the equivalent of two times the state minimum wage, they must be classified as non-exempt. California's minimum wage is set to raise from \$9.00 to \$10.00 per hour on January 1, 2016.

