

Happy Holidays! 2015 was a busy year for the California legislature. Hundreds of bills were signed into law, and more than a dozen of them affect employment law. Below is a brief review of some key legislation you need to be aware of for the 2016 calendar year. While there are other employment-specific laws affecting very specific industries (e.g., grocery establishments, public entities and ridesharing companies like Uber), the following laws are more generally applicable to most if not all employers:

Minimum Wage Increase

The California minimum wage will rise to \$10 per hour on **January 1, 2016**. Although this is a result of a previous IWC Wage Order (MW-2014) as opposed to new legislation, employers must be prepared for the impact of the wage hike. It goes without saying that the first thing employers must do is make sure they comply with the new wage immediately. However, there are some other consequences and changes that may need to be made as a result of the increase. For example, employers may need to analyze exempt employees at or near the previous minimum salary cut-off. At the \$9 minimum wage, executive, administrative or professional employees may be qualified as exempt if they meet the exempt requirements and earned a monthly salary of at least \$3,120. Beginning January 1, the minimum salary cut-off will increase to \$3,467 per month.

Wage Equality

Perhaps the most important and impactful new legislation is [SB 358](#), called the "Fair Pay Act." This bill revisits and redefines equal pay across genders. The new language states that employers may not pay an employee less than an opposite-sex employee "for substantially similar work, when viewed as a composite of skill, effort and responsibility." Further, the bill requires an employer to prove that any difference in pay is reasonably and entirely based on one or more of the following specific factors: seniority, merit, quantity/quality of production or a *bona fide* factor other than sex.

The bill protects an employee's ability to disclose, discuss or inquire about the wages of another employee and creates a private right of action for improper discharge, discrimination or retaliation based on the rights created by the bill. **A key component of this bill that affects employers across the board is that employers will now be required to maintain employee records for three years, instead of the previous two-year requirement.**

Employers should review their employee records' policies to ensure records are kept for three years or more and review their pay practices to ensure conformity with this new law. There is a substantial likelihood that we could see an uptick in gender discrimination claims and that the Courts will have to hash out exactly what this new law will mean in practical terms.

Unlawful Use of Federal E-Verify System

[AB 622](#) expands the definition of "unlawful employment practice" to prohibit an employer from using the E-Verify system at a time or in a manner not required by federal law to check the employment authorization status of a current employee, or of an applicant who has not received an offer of employment. This bill imposes a \$10,000 civil penalty for each violation. Employers should ensure that their human resources' or other authorized personnel only use the E-Verify system as expressly allowed by law.

Clarification of School Activities Leave, "Kin Care" and Paid Sick Leave

[SB 579](#) expands the availability of leave for school activities and attempts to harmonize the paid sick leave law enacted in 2015 with the "Kin Care" law enacted in 2011. Protected school activities now include child care provider or school emergencies, and finding, enrolling or reenrolling in a school or child care provider. The definition of "parent" is expanded to include a parent, guardian, stepparent, foster parent, grandparent or person who stands *in loco parentis* to the child. This bill also permits an employee to use "Kin Care" leave for the purposes specified in the Healthy Workplaces, Healthy Families Act of 2014. This bill will likely require some revision to most employers' written policies on such leaves. Employers should review their School Activity and/or "Kin Care" Leave policies or practices and make the required adjustments.

FEHA Accommodations

Although a common-sense application of the existing law, [AB 987](#) makes clear that an employer is prohibited from retaliating or discriminating against an employee for requesting a religious or disability accommodation, regardless of whether the request is granted.

Private Attorney General Act

In an apparent effort to curb some of the most egregious "gotcha" violations coming from the Plaintiff's Bar in recent years, the legislature has amended the PAGA under [AB 1506](#), to create an opportunity for employers to "cure" two types of itemized wage statement violations before an employee may bring a civil action under the act. The curable violations are: 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 include the name and address of the legal entity that is the employer. These violations can only be cured once in a 12-month period. The bill was determined to be “urgency legislation,” and became effective **October 2, 2015**.

Whistleblower Protection

[AB 1509](#) extends retaliation protections to “family members” working for the same employer. Specifically, protections for making *bona fide* complaints under the Labor Code, and for subsequent discrimination, retaliation or other adverse employment action, will be extended to family members who either make a complaint, or who work for the same entity. The bill also expands such protections to “client employers” (e.g., staffing employers and client companies) under the joint employer liability presumption.

Piece-Rate Workers

[AB 1513](#) applies to employers with employees paid in a piece-rate system. This bill requires piece-rate employees be paid for rest and recovery periods, and other nonproductive time at a rate separate from any piece-rate compensation. Itemized wage statements are required to include the total hours of compensable rest and recovery periods and other nonproductive time, the rate of compensation and the gross wages paid for that time during the pay period. “Other nonproductive time” is defined as “time under the employer’s control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.” Employers with piece-rate systems should consult a qualified attorney or other professional to ensure that their piece-rate pay system is compliant under California law.

Unemployment Insurance

Beginning **January 1, 2017**, [AB 1245](#) will require employers with 10 or more employees to file unemployment insurance reports and returns electronically, and remit contributions for premiums by electronic funds transfer, subject to enumerated exceptions. This bill will extend to all employers beginning **January 1, 2018**.

How to Stick With Your Resolution?

As with any new year, employers should routinely:

- Review and update employee handbooks, policies and procedures to reflect the new laws and any other changes that have occurred in the past year
- Verify that all required postings are up-to-date, and include any new information or changes to policy and procedure
- Communicate openly, clearly and frequently with supervisors, HR and management to ensure they know and understand what is required of them, and of their employees
- Distribute all policy changes in writing to employees (with new signed acknowledgements as needed)
- Contact experienced legal counsel with any questions about new legislation, or how to properly and efficiently develop and/or implement changes to your policies or practices

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