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NEW CALIFORNIA LAWS IN 2014 THAT AFFECT EMPLOYERS!

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As usual, the California legislature has been busy. The following is a summary of new employment-related laws that will take effect in the New Year. Unless otherwise stated, the effective dates are January 1, 2014.

Wage & Hour

AB 10 - raises the minimum wage.

This bill raises the minimum wage to \$9 per hour on July 1, 2014 and to \$10 per hour on January 1, 2016. Please note that this change also indirectly affects employees who are exempt from overtime wages, because exempt employees' pay must be no less than two times the minimum wage. Those employees whose salaries are less than two times the new minimum wage will also need a salary increase to continue to qualify for the overtime exemption.

AB 241 - overtime pay for domestic employees.

This bill generally applies only to in-home workers. It requires employers to provide to "domestic employees" who are "personal attendants" overtime wages, at one-and-a-half times the regular rate of pay, for daily hours worked over 9, and weekly hours worked over 45. The new requirement applies to employees who perform "services related to the care of persons in private households or maintenance of private households or their premises" and who are "employed by a private householder or by any third-party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child, or a person who by reason of advanced age, physical disability, or mental deficiency needs supervision." The requirement applies to employees who spend at least 80% of their work time supervising individuals who need assistance in the home. This generally includes childcare providers and caregivers of people with disabilities, the elderly, and people who are sick or convalescing.

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The statute excludes people who provide “care of persons in facilities providing board or lodging in addition to medical, nursing, convalescent, aged, or child care,” “employees of licensed health facilities,” and “employees employed pursuant to a voucher from a regional center or employed by organizations who have contracts with regional center or the state Department of Developmental Services.” However, those occupations are generally already covered by other overtime rules. Also not included in this new requirement are: a parent, grandparent, spouse, sibling, child, or legally adopted child of the “employer,” babysitters under 18 who watch minor children in their home, and babysitters over 18 who babysit only intermittently and not as their primary job. There are other exclusions for certain types of agencies. The statute as currently written is only in effect until January 1, 2017, and the Governor is required to convene a commission to study the statute’s effects on domestic workers and their employers.

SB 435 - penalties for failure to provide "cooldown periods."

This bill applies to employers who are subject to Cal-OSHA’s heat illness standards. For those employers, the bill extends “meal and rest period” law to “recovery periods,” which are defined as cooldown periods to prevent heat illness. These employers will be prohibited from denying employees recovery periods that are required by law or required by regulation or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The same penalties that apply to missed meal and rest periods will be applied to missed recovery periods. The requirement does not apply to employees who are otherwise exempt from the meal and rest period requirement.

SB 168 - unpaid wages liability farm contractors.

This bill applies to certain farm labor contractors who are successors to another farm labor contractor; if for example, they purchase an operation or otherwise overtake an operation. The successor farm labor contractor will be held liable for the unpaid wages of the prior farm labor contractor if one of the following applies:

- The new contractor uses substantially the same facilities or workforce and offers substantially the same services as the prior contractor,
- the new contractor shares ownership, management, or control of the workforce, or has other interrelated business operations with the prior contractor,
- the new contractor employs in a managerial capacity any person who controlled the wages, hours, or working conditions of the employees owed wages or penalties by the prior contractor, or is an immediate family member of any owner, partner, officer, licensee, or director, or any person who had a financial interest in the prior contractor.

Because of this bill, farm labor contractors have to be extra cautious when acquiring prior operations that they are not also acquiring exposure to unpaid wages liability.

AB 1387 - bond requirement for car washes.

This bill changes the bond car washes are required to pay to the state, which is intended to compensate its employees in the event the car wash becomes liable to its employees for nonpayment of wages. This bill increases the bond from \$15,000 to \$150,000. However, car washes are exempt from the bond requirement if they have collective bargaining agreements that address wage and hour issues and meet specified criteria set forth in the bill.

SB 462 – attorney’s fees in unpaid wages lawsuits.

This bill limits employers’ rights to collect attorney’s fees when they prevail in certain lawsuits for unpaid wages or unpaid fringe benefits. Those employers will only be able to collect attorney’s fees if they prevail and if the court finds the employee brought the action “in bad faith.” This bill will likely increase litigation by lessening or removing the risk from employees who want to file questionable claims.

AB 1386 – collection of awards by the Labor Commissioner.

This bill allows the California Labor Commissioner to assert liens against a company’s property in an amount equal to an award issued by the Labor Commissioner against that employer in favor of one of its employees (for example, an award of unpaid wages.) Essentially, this provides the Labor Commissioner another method to collect unpaid wages on behalf of employees.

SB 390 – failing to remit employee withholdings; crime.

This bill makes it a crime to fail to remit withholdings from employee’s wages to the proper agency, for withholdings made pursuant to federal, state or local law. This bill does not change the already existing requirements for withholdings, it just makes the failure to withhold subject to criminal penalties.

Discrimination and Retaliation

AB 556 – discrimination protection for members of the military.

This bill adds “Military and Veteran status” as a protected characteristic under California’s employment discrimination statutes. Therefore, in addition to race, sex, disability, marital status, sexual orientation, and all the other protected characteristics, employers can be subject to litigation for discriminating against current and former military members. “Military and veteran status” is defined broadly as “a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.” Importantly, the bill contains an exception that allows “employers to identify members of the military or veterans for purposes of awarding a veteran’s preference as permitted by law.”

SB 400 – employment protections for victims of stalking and domestic violence.

This bill extends certain employment protections to victims of stalking or domestic violence. These protections include a prohibition against terminating employees because they are the victim of domestic violence, sexual assault, or stalking, and a requirement to provide those employees reasonable accommodations if they notify their employer of a need for accommodations. The bill also requires employers with 25 or more employees to provide time off, with reasonable advance notice from the employee where feasible, to seek medical treatment for injuries related to the domestic violence, to consult a rape crisis center or domestic violence program, or to participate in safety planning. It requires all employers to provide time off to attend legal proceedings related to the domestic violence. Please read our more comprehensive alert about this bill [here](#).

SB 288 – employment protections for victims of crime.

This bill prohibits employers from discriminating or retaliating against employees who are victims of specified crimes if they take time off from work to participate in certain legal proceedings. The employee is required to provide advance notice, where feasible. The crimes included in this statute are vehicular manslaughter while intoxicated, felony child abuse likely to produce great bodily harm or a death, assault resulting in the death of a child under eight years of age, felony domestic violence, felony physical abuse of an elder or dependent adult, felony stalking, solicitation for murder, hit-and-run causing death or injury, felony driving under the influence causing injury, sexual assault, and other serious felonies specified in the law.

SB 496 – whistleblower protections for employees who report violations of local law.

This bill expands state whistleblower protections to employees who report to a governmental agency a reasonable belief that the employer is violating local ordinances. (This specific law in the past only protected employees who reported violations of state or federal law.) This bill also expands the protections to employees who disclose violations of state, federal, or local law to supervisors or other employees who could investigate or correct the violations believed to be occurring. Employers should make sure to investigate all “whistleblower” complaints promptly and make sure supervisors know to report such complaints to HR.

AB 263 – prohibition of retaliation for participating in Labor Commissioner hearings, political activity, lawful conduct outside work, and whistle-blowing.

This bill prohibits retaliation or other adverse employment actions against employees for filing complaints with the Labor Commissioner or participating in Labor Commissioner hearings, or because of the employee’s lawful conduct outside of work or political activity, or because of whistleblowing activities. (Current law only explicitly prohibited discrimination and termination, not retaliation and other adverse employment actions.) The bill also extends these protections to employees who file written or oral complaints that they are owed wages. The bill creates a civil penalty of \$10,000.00 per employee per violation.

SB 292 – sexual harassment need not be motivated by sexual desire.

This bill changes California’s sexual harassment law to explicitly state that sexual harassing behavior need not be motivated by sexual desire.

AB 218 – government agencies, asking applicants about criminal convictions.

This bill applies only to government agencies, not private employers. It prohibits state and local agencies from asking applicants for information about their criminal convictions until the employer has determined that the applicant meets the minimum requirements to get the position. There are exceptions for governmental agencies that are required by law to conduct criminal background checks, and exceptions for positions in a criminal justice agency.

Leaves of Absence

AB 11 – leave of absence for emergency personnel training.

This bill requires employers who employ more than 50 employees to grant up to 14 days unpaid leave of absence per year to employees who are volunteer firefighters, reserve peace officers, or emergency rescue personnel, to attend fire, law enforcement, or emergency rescue training. Current law granted this type of leave to volunteer firefighters only. “Emergency Rescue personnel” are officers, employees, or members of a government fire department, or of a sheriff’s department, police department, or a private fire department. It applies to volunteer as well as paid emergency personnel.

SB 770 – temporary disability benefits for employees caring for seriously ill grandparents, grandchildren, siblings, or parents-in-law.

Effective July 1, 2014, this bill extends temporary disability benefits to workers who take time off from work to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law. Such workers are eligible for up to 6 weeks of wage replacement benefits from the state, similar to existing law that grants the same benefits to workers who take time off from work to care for a seriously ill child, spouse, parent, or domestic partner. This bill does not create a new leave of absence right under CFRA or FMLA

AB 1181 – time off for representatives of public employee unions.

This bill requires public agencies to give employees reasonable time off, with pay, if they are representatives of public employee organizations, for testifying or appearing on behalf of the union in conferences, hearings, or other proceedings before the Public Employee Relations Board relating to a charge between the union and the public agency, or testifying or appearing on behalf of the union before a personnel or merit commission.

Immigration

AB 263 – retaliation based on immigration status.

This bill also prohibits retaliation in the form of “unfair immigration-related practices” against suspected undocumented workers who exercise any rights under the California *Labor Code* or local ordinances applicable to employees. “Unfair immigration-related practices” include refusing to honor acceptable documents, or requiring different documents than the law requires, when performing I-9 employment verification checks, using the e-verify system in a way not explicitly authorized by federal law to check that workers’ immigration status, threatening to file or filing a false police report, and threatening to contact immigration authorities. Workers subjected to unfair immigration-related practices can sue in state court and the employer who violates this provision can lose certain business licenses for specified time periods. The law does not apply to immigration checks explicitly authorized by federal law (i.e. I-9 checks.) However, employers are now explicitly barred from reporting, or threatening to report, an employee’s suspected status as an undocumented worker to immigration authorities after that employee exercises employment-related rights.

AB 60 granted undocumented individuals in California the right to obtain driver’s licenses. These driver’s licenses will state on their face that they are not acceptable identification for I-9 verifications or other purposes under federal law, so employers need to be aware of that limitation. ■