

NOVEMBER 4, 2015 | STATE & LOCAL TRENDS

California Caps Off 2015 Legislative Session with Far-Reaching New Employment Laws

✖ California's 2015 legislative session ended, again resulting in new employment laws either expanding existing employee protections or creating entirely new spheres of regulation. Private employers with a California presence should be aware of at least the following new laws as they conduct an end-of-year review of their personnel policies and procedures. Unless indicated otherwise below, these new laws take effect on January 1, 2016.

Whistleblower Protections Substantially Expanded to Recognize Activities by an Employee's Family Member (AB 1509)

Governor Brown signed AB 1509, which extends anti-retaliation laws to prohibit retaliation based on not just the employee's protected activity but because that employee is a "family member" of a person who engaged in, or was perceived to engage in, protected activity. This protected activity may take the form of bona fide complaints of unlawful activity or testifying in legal proceedings. This unprecedented broad expansion of existing whistleblower laws applies to Labor Code sections 98.6 (bona fide complaint regarding entitlement to unpaid wages, among other employment benefits); 1102.5 (disclosing a violation of the law and refusing to participate in activity that would result in a violation of the law) and 6310 (complaint to the Division or employer regarding unsafe working conditions). Expanding protected activity to include actions by an employee's family member will further muddy the waters and spur frivolous claims.

Gender-Based "Fair Pay Act" (SB 358)

Governor Brown signed SB 358, known as the California "Fair Pay Act." This law seeks to eliminate the gender wage gap by amending Section 1197.5 of the Labor Code to reinforce existing law, which precludes employers from paying an employee at wage rates less than the rates paid to employees of the opposite sex "at the same establishment for equal work performed on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." Existing law provides exemptions where the payment is made pursuant to a seniority system, merit system, system which measures earnings by quantity or quality of production, or differential based on any bona fide factor other than sex.

SB 358 eliminates the requirement that the wage differential be within "the same establishment," and instead prohibits an employer from paying any of its employees at wage rates less than those paid to employees of the

opposite sex for “substantially similar work, when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions....” The amendment also requires that where there is a gender-based pay differential, the employer affirmatively demonstrate that the wage differential is based upon one of the existing exemptions. Another significant aspect of this law is it prohibits retaliation against an employee for exercising rights under these provisions, and an employee claiming a violation of the Fair Pay Act may file a civil action to seek reinstatement and the recovery of lost wages and work benefits caused by the employer’s act, as well as attorney’s fees and costs.

Reprieve from Representative Actions over Minor Paystub Violations (AB 1506)

One of the most notorious abuses of the Labor Code Private Attorneys General Act of 2004 (PAGA) –providing a class action-light mechanism for recovering penalties for wage and hour violations– is litigation over an employer’s failure to include certain categories of information in wage statements. To address employer concerns over these nuisance claims, the legislature has amended PAGA to provide employers the right to cure certain pay stub violations by providing a fully compliant, itemized wage statement to each aggrieved employee for the prior three-year period. Specifically, employers may cure once in a 12-month period any deficiency related to the reporting of the payroll period as well as the employee’s and employer’s identification information. Failure to accurately list hours worked and wages cannot be cured. Governor Brown has signed AB 1506, which took effect on October 2, 2015.

Grocery Workers – Preferential Hiring Following Change in Control (AB 359 and AB 897)

The Governor signed AB 359 imposing requirements on supermarkets and other grocery retailers experiencing a “change in control,” which by definition includes the sale, merger or reorganization of the business. This law applies to workers with at least six months’ prior employment as of the date of the change in control, and does not include managerial or confidential employees. Following the enactment of AB 897, this law was amended to exempt any grocery establishment that has ceased operations for six months or more.

AB 359 requires that within 15 days of execution of any purchase agreement or other document effecting the change in control, the existing grocery employer provide the successor employer a list of the name, address, date of hire and employment occupation classification of each eligible employee. The successor employer must then hire from that list upon execution of the transfer document and continuing for 90 days after the grocery establishment is fully operational and open to the public under the successor grocery employer. During the 90-day transition period, the successor grocery employer may not discharge without cause a retained worker. At the end of the 90-day period, the successor employer must evaluate in writing each retained worker and, if the worker’s performance is satisfactory, the grocery employer “shall consider” offering that worker continued employment.

Expanded Gender Violence Protections (AB 830)

Governor Brown signed AB 830, which both amends the definition of “gender violence” under California Civil Code section 52.4 to include a person’s gender identity and expression, and expands its coverage to sexual orientation violence. Existing provisions of Section 52.4 allow an individual who has been subjected to gender violence to bring a civil action for damages against “any responsible party.” This law is not specific to employers

and impacts other legal areas as well, including litigation against public accommodations by guests alleging violence motivated by their gender or sexual orientation.

Expanding Leave for Employee to Attend Child’s School-Related Activities (SB 579)

The Governor signed SB 579, which broadens the circumstances under existing law when an employee may take time off for the school activities of that employee’s child. Existing law prohibits an employer, with 25 or more employees working at the same location, from discharging or otherwise retaliating against an employee for taking off up to 40 hours each year to participate in school activities of a child in a licensed child day care facility, or in kindergarten to grade 12. The amendment revises references to a child day care facility to instead refer to a “licensed child care provider,” and the specific approved activities for which the employee may take leave are enumerated as (1) finding, enrolling or re-enrolling the employee’s child in a school or with a licensed child care provider; (2) participating in activities of the school or licensed child care provider of his or her child; and (3) addressing a child care provider or school emergency. Also, the new law clarifies that employees eligible for this leave entitlement must be the parent, guardian, stepparent, foster parent, or grandparent of the child, or stand in loco parentis to the child.

SB 579 also requires employers to permit employees to use paid sick leave available under the Healthy Workplaces, Healthy Families Act of 2013 for absence for these school-related activities, and prohibits retaliation against employees for taking time off for such child-related activities.

Health Care Meal Period Waivers (SB 327)

Following a recent appellate decision, *Gerard v. Orange Coast Memorial Medical Center*, questioning the validity of meal period waivers specific to the health care industry, the California Legislature passed SB 327 providing that provisions in existing wage orders permitting health care employees to waive one of their two meal periods for work shifts in excess of eight hours are valid and enforceable. SB 327 took effect on October 5, 2015.

Vetoed Legislation



While most of the employment bills passed by the legislature were signed into law, there were a few notable exceptions. Governor Brown vetoed AB 465, which would have precluded mandatory pre-dispute employment arbitration agreements. Had this blanket prohibition become law, it would have certainly been challenged in the courts as violating the Federal Arbitration Act. In his veto message, the Governor cited existing procedural safeguards to ensure fairness in employment arbitration agreements as well as questioned the legal enforceability of such blanket prohibition on arbitration.

The Governor also vetoed AB 1017, a bill that would have prohibited an employer from seeking salary history information about an applicant for employment. The Governor noted in his veto message that “California has the strongest equal pay law in the nation [after passage of the “Fair Pay Act”]” and the bill “broadly prohibits employers from obtaining relevant information with little evidence that this would assure more equitable wages.”

Governor Brown also vetoed SB 676, a bill that would have prohibited an employer from discriminating against a

job applicant based on the applicant's status as unemployed. This bill was substantially similar to the bill that had been introduced in the previous year's legislative session and which the Governor had vetoed. In his veto message, the Governor reiterated that "the author's approach does not provide a proper or even effective path to get unemployed people back to work."