

LEGISLATIVE DEVELOPMENTS AFFECTING CALIFORNIA EMPLOYERS IN 2016

December 2015

This year has brought many changes that will impact all California employers. This annual report from Greenberg Glusker's Employment Department summarizes some of the most important employment law developments that will affect California employers in the upcoming year. We look forward to working with you in 2016!

Employer's Right to Cure Wage Statements (Effective Immediately)

Current law requires an employer to provide its employees with wage statements containing specific information, including dates of the pay period and the identity of the legal entity that is the employer, either semimonthly or at the time of each wage payment. Under the Labor Code Private Attorneys General Act of 2004 (PAGA), an employee may bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency, including claims relating to an employer's failure to provide accurate or timely wage statements.

AB 1506 provides employers the right to cure a violation of the wage statement requirements within 33 days of receiving notice that an employee may bring a PAGA civil action. The violation is considered "cured" only when the employer shows that it has provided a fully compliant, itemized wage statement to each aggrieved employee. An employer's right to cure is limited to once for the same violation in a 12 month period.

Health Care Employees May Waive Second Meal Period (Effective Immediately)

Under current law, employees are entitled to two meal periods for work periods of more than 10 hours. Under Wage Order 5 of the California Industrial Welfare Commission, health care industry employees are permitted to voluntarily waive one of the two meal periods for shifts exceeding 12 hours in a workday. In order to reaffirm the legality of such waivers in light of a recent appellate court decision, *Gerard v. Orange Coast Memorial Medical Center*, 234 Cal.App.4th 285 (2015), the legislature enacted SB 327, which confirms the validity of the health care employee waiver provisions of Wage Order 5.

Clarification of Accrual of Sick Leave Under the Healthy Workplaces, Healthy Families Act of 2014 (Effective Immediately)

The Healthy Workplaces, Healthy Families Act of 2014 provides, among other things, that an employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. AB 304 clarifies that the employees must work 30 or more days within a year for the same employer in order to qualify for accrued sick leave.

Additionally, AB 304 authorizes an employer to provide sick leave accrual on a basis other than one hour for each 30 hours worked, provided that the accrual is on a regular basis and the employee will have 24 hours of accrued sick leave available by the 120th calendar day of employment or each calendar year, or in each 12-month period. Or, an employer may satisfy the accrual requirements by providing no less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment.

Among its other provisions, AB 304 also permits employers to keep sick leave plans existing prior to January 1, 2015 provided that the accrual method results in employees having no less than one day or eight hours of accrued sick leave or paid time off within three months of employment of each calendar year or 12-month period, and the employee is eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment.

Protections for Time Off for Children (Effective January 1, 2016)

Employers of 25 or more employees working at the same location are prohibited from discriminating against, discharging, demoting, or suspending an employee who is a parent, guardian, or grandparent having custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours each year for the purpose of participating in school activities. SB 579 revises references to a "child day care facility" to instead refer to a "child care provider" and defines "parent" as a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child, thereby extending these protections to an employee who is a stepparent or foster parent or who stands in loco parentis to a child.

SB 579 also prohibits discrimination against a parent from taking unpaid time off for a child care provider emergency or a school emergency, and the finding, enrolling, or reenrolling of a child in a school or with a child care provider.

"Sick Leave" Expanded to Incorporate the Healthy Workplaces, Healthy Families Act of 2014 (Effective January 1, 2016)

Current law requires an employer who provides sick leave to permit an employee to use one-half of the employee's accrued and available sick leave to attend to the illness of a child, parent, spouse, or domestic partner. "Sick leave" was defined as leave provided for use by the employee during an absence from employment for specified reasons, including, but not limited to, an employee's inability to perform his or her duties due to illness, injury, or a medical condition of the employee.

The Healthy Workplaces, Healthy Families Act of 2014 requires an employer, upon the request of an employee, to provide paid sick days for a victim of domestic violence, sexual assault, or stalking; or the diagnosis, care, or treatment of an existing health condition or preventive care for the employee or the employee's family member. "Family member" is defined to include the above-described relatives and grandparents, grandchildren, and siblings.

SB 579 redefines "sick leave" as leave provided for use by the employee during an absence from employment for the purposes specified in the Healthy Workplaces, Healthy Families Act of 2014. Therefore, employees are now protected in using sick leave for their and their family

member's health condition or preventative care, or if the employee is a victim of domestic violence, sexual assault, or stalking. The law is also amended to eliminate the ability of employers to limit the use of sick leave for purposes other than the employee's own illness to one-half of all available leave. Employees may now use all available sick leave for any of the purposes set forth in the Healthy Workplaces, Healthy Families Act of 2014.

Limitations on Use of the E-Verify System (Effective January 1, 2016)

By law, employers may only employ individuals who are legally authorized to work in the U.S. Employers may voluntarily use the federal E-Verify system, which verifies whether an applicant is authorized to work. Existing law prohibits an employer or any other person or entity from engaging in unfair immigration-related practices against any person for the purpose of retaliating against the person for exercising specified rights.

AB 622, codified in new Labor Code Section 2814, is designed to increase protections against discriminatory hiring practices. The new bill expands the definition of an "unlawful employment practice" to prohibit an employer or any other person or entity from using the E-Verify system at a time or in a manner not required by a specified federal law or not authorized by a federal agency memorandum, except as required by federal law or as a condition of receiving federal funds. This restriction prohibits employers from checking the employment authorization status of an existing employee or an applicant who has not been offered employment at a time or in a manner not required by law.

AB 622 also requires employers using the E-Verify system to provide to the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee's E-Verify case or any tentative nonconfirmation notice. Finally, an employer violating these provisions will be subject to a civil penalty of \$10,000 per violation.

Expansion of the Labor Commissioner's Enforcement Powers (Effective January 1, 2016)

The California Labor Commissioner is authorized to investigate and enforce statutes and orders of the Industrial Welfare Commission. AB 970 authorizes the Labor Commissioner to investigate and, upon a request from a local entity, to enforce local overtime and minimum wage laws. The bill also allows the Commissioner to issue citations and penalties for violations, except when the local entity has already issued a citation for the same violation.

Additionally, current law provides that employers must indemnify their employees for expenditures incurred as a direct consequence of the discharge of their duties or as a result of obeying the employer's directions. AB 970 authorizes the Labor Commissioner to enforce these reimbursement provisions by issuing citations and penalties to noncompliant employers.

Protection for Employees "Requesting" Accommodations (Effective January 1, 2016)

Under the California Fair Employment and Housing Act (FEHA), employers must provide reasonable accommodations for a person's disability and religious beliefs and cannot discriminate against any person because the person has opposed any practices forbidden under the act or because the person has filed a complaint. AB 987 amends FEHA to expressly prohibit

retaliation and discrimination against a person “requesting” an accommodation for his or her disability or religious beliefs, regardless of whether the request is granted.

Changes to Piece-Rate Compensation (Effective January 1, 2016)

State law prohibits employers from requiring an employee to work during any meal, rest, or recovery period mandated by law. AB 1513 requires employees to be compensated for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates, separately from any piece-rate compensation. “Other nonproductive time” is defined to mean 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.

Additionally, AB1513 requires the wage statement provided to employees compensated on a piece-rate basis to *also* separately state the total hours of compensable rest and recovery periods or nonproductive time, the rates of compensation, and the gross wages paid for those various periods during the pay period.

Expansion of the Equal Pay Act (Effective January 1, 2016)

Effective January 1, 2016, SB 358 will amend California Labor Code Section 1197.5 to require California employers of all sizes to comply with the Fair Pay Act. The Fair Pay Act requires employers to provide equal pay to male and female employees who perform “substantially similar” work throughout their entire company and not just at any given location. For more detailed information, please review our [Client Alert](#).

Judgment Enforcement Powers of the Labor Commissioner (Effective January 1, 2016)

SB 588 authorizes the Labor Commissioner to use any existing remedy available to a judgment creditor and to act as a levying officer when enforcing a judgment against an employer arising from the employer’s nonpayment of wages for work performed in California.

Among its other provisions, SB 588 also authorizes the Labor Commissioner to provide hearings to recover civil penalties against any employer, or other person acting on behalf of an employer, for violating orders by the Industrial Welfare Commission regulating minimum wages or hours and days of work or other related provisions of law. The term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer.

Protections for Employee’s Family Members (Effective January 1, 2016)

In California, employers may not discriminate, retaliate, or take any adverse action against any employee or applicant because that person has engaged in “protected conduct,” which includes making whistleblower complaints, complaints of discrimination, or complaints about unsafe working conditions. AB 1509 expands these protections to family members of the employee engaging in, or perceived to have engaged in, protected conduct. Thus, family members working for the same employer (or applying for employment) are now protected from retaliation if one of the family members engages in protected conduct.

Among its other provisions, AB 1509 also expands joint employer liability under these retaliation laws to include “client employers” who contract for labor through staffing agencies. A “client employer” can be liable when a staffing agency retaliates against a worker for engaging in whistleblowing or other protected activity.

Minimum Wage Update: Federal, State, and Local Wage Rates

The current federal minimum wage is \$7.25 per hour. This has been the federal minimum wage for the last six years, and although there are proposals to increase it, it is not currently scheduled to increase. California’s current minimum wage is \$9.00 per hour, increasing to \$10.00 per hour on January 1, 2016. Because California’s minimum wage exceeds the federal standard, California employers must pay no less than the California minimum wage to their employees.

In addition, certain California cities and municipalities have established their own higher minimum wages, and those rates will prevail in those jurisdictions. For example, Mayor Eric Garcetti signed into law a measure which will create a special minimum wage for the first time ever in the City of Los Angeles. The law is estimated to impact 600,000 workers and raises the minimum wage for all employers of 26 or more employees to \$10.50 per hour on July 1, 2016, \$12.00 per hour on July 1, 2017, \$13.25 per hour on July 1, 2018, \$14.25 per hour on July 1, 2019 and \$15.00 per hour on July 1, 2020. For more detailed information, please review our [Client Alert](#).

Deletion of Term “Alien” from the Labor Code

SB 432 deletes provisions of the Labor Code containing the term “alien” as used to describe persons not born in or fully naturalized as citizens of the U.S.

Consolidation of Disability Benefit Periods (Effective July 1, 2016)

Under SB 667, two consecutive periods of disability benefits which are due to the same or related cause or condition are now considered one disability benefit period if the time between periods is 60 days or less (increased from 14 days or less).

Cheerleaders for California-based Professional Sports Teams are “Employees” (Effective January 1, 2016)

Under AB 202, cheerleaders who are utilized by California-based professional sports teams during exhibitions, events, or games are deemed employees. Professional sports teams must ensure that their cheerleaders are classified correctly as employees.

Changes to Wage Garnishment Restrictions (Effective July 1, 2016)

SB 501 reduces the prohibited amount of an individual judgment debtor’s weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of 25% of the individual’s weekly disposable earnings or 50% of the amount by which the individual’s disposable earnings for the week exceed 40 times the state minimum hourly wage, or applicable local minimum hourly wage, if higher, in effect at the time the earnings are payable.



[Olivia Goodkin](#)
OGoodkin@greenbergglusker.com
T: 310.201.7446 | F: 310.201.2334



[Nancy A. Bertrando](#)
NBertrando@greenbergglusker.com
T: 310.201.7483 | F: 310.201.2383



[Wendy Lane](#)
WLane@greenbergglusker.com
T: 310.785.6870 F: 310.201.2365



[Paul Blechner](#)
PBlechner@greenbergglusker.com
T: 310.201.7546 | F: 310.201.2333



[Charles N. Shephard](#)
CShephard@greenbergglusker.com
T: 310.201.7494 | F: 310.201.2394



[Sofia Aguilar](#)
SAguilar@greenbergglusker.com
T: 310.785.6824 | F: 310.201.2325