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Trends & Change

EMPLOYMENT & LABOR NEWS & INSIGHTS

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Recruiting Practice Reminders

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Members of Wilson Elser's Employment & Labor practice, located throughout California and the United States provide one convenient point of contact for our clients. Please contact us to discuss your organization's needs.

For more information about Wilson Elser's Employment & Labor practice, visit our [website](#).

Recruiting Practice Reminders

By Margaret Lubberda, Chief Human Resources Officer

If you are a hiring manager or human resources professional who posts job openings to your organization's website, carefully review the content to ensure it is specific, clear and concise. Be aware that these postings will be picked up by other internet sites

year from the date the hiring decision is made to cover Title VII, ADA and ADEA requirements, it is recommended that you keep the resumes and applications of individuals who apply for advertised positions for at least three years.



or job boards and that the language you use to describe the position will be taken *verbatim* from your posting.

Be sure that each posting describes the objective criteria, such as knowledge or skill sets, and avoids subjective language. This will allow the applicant to gain a better understanding of what your organization seeks and expects for the position. It also can save time for everyone by eliminating applicants who are unqualified or otherwise unsuited for the position.

When you are posting jobs on internet job boards, be sure you select sites that reach minority populations. A diverse workforce is highly desirable, and inclusive advertising practices can support your defense in the event of claims of bias in your selection process.

Finally, select candidates to interview whose resumes match the job requirements and reject those that do not. While employers with 15 or more employees must retain hiring records for each position for at least one

Wilson Elser can provide more information and best practices regarding hiring processes and procedures. We invite you to contact a member of our Employment & Labor practice to discuss how recruiting methods can affect your organization.

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Department of Fair Employment and Housing Unveils 2016–2017 Strategic Plan

The Department of Fair Employment and Housing (DFEH) has unveiled its 2016–2017 Strategic Plan, which will guide the Department in working toward its vision over the next three to five years.

One of the most important goals of the DFEH is to expand access to information about the public's rights and responsibilities. The Department intends to (1) increase communications and outreach activities to communities in need of information; (2) make the Department's website and other resources more user-friendly; and (3) develop additional information and educational materials on "hot" topics for business owners. The Strategic Plan also includes an analysis of the kinds of discrimination that are occurring among various populations and industries in order to address the violations and enhance enforcement.

In addition, the DFEH will continue to partner with federal agencies and other state departments to leverage its educational and enforcement efforts. Building stronger alliances with entities such as the EEOC, HUD, Cal/Vet, EDD and other California enforcement entities and community organizations will be pivotal in reaching the DFEH's goals. The Department also will take action to prevent and combat discrimination and hate violence in 2017 by:

- Proactively pursuing cases for investigation and litigation based on statistical information suggesting a high likelihood that discrimination is taking place
- Identifying patterns of discrimination within various industries, jobs and regions, and undertaking targeted enforcement efforts to address areas of concern
- Using the Department of Justice's resources to train DFEH staff
- Promoting the public's awareness of the DFEH's community conciliation function.



Wilson Elser will closely monitor the progress of the DFEH as it implements its Strategic Plan. We invite you to contact a member of our Employment & Labor practice to discuss how related issues can affect your organization.

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California Court of Appeal Expands Employer's Duty to Accommodate

In *Castro-Ramirez v. Dependable Highway Express, Inc.*, the California Court of Appeal for the Second District held that an employer's duty to reasonably accommodate disabilities extends to accommodating employees *associated with* a disabled person.

At the time the plaintiff in *Castro-Ramirez* was hired as a truck driver, he had informed his employer, Dependable Highway Express, that he had a son who required daily dialysis treatment. The plaintiff's supervisor accommodated his request for an earlier driving shift that enabled him to be home in time to administer his son's dialysis. When a new supervisor took over the position three years later, however, the new supervisor assigned the plaintiff to later shifts without justification and over the plaintiff's objections. One day, the supervisor assigned the plaintiff to the latest driving shift possible. When the plaintiff explained he could not accept the shift because he would not be home in time to tend to his son, the supervisor terminated his employment for his refusal.

In the plaintiff's appeal of the defendant's successful Motion for Summary Judgment, the Court closely examined the plaintiff's claims for disability discrimination (under California's Fair Employment and Housing Act, or FEHA) and retaliation. In addition, the Court addressed the plaintiff's initial claim for failure to provide reasonable accommodation under FEHA although he had not pursued this particular claim on appeal. The Court held that because the FEHA provision establishing a discrimination claim explicitly defined physical disability as including *association with* a physically disabled person, the same definition applied to a reasonable accommodation claim under FEHA. The Court thereby created a duty by the employer to reasonably accommodate employees associated with a disabled person.

With respect to the retaliation claim, the Court held that a request for reasonable accommodation on its own constitutes protected activity under FEHA. The Court further opined that an employee need not use legal terms or buzzwords to oppose unlawful conduct for the purposes of a retaliation claim.



As far as the Court's holding regarding the duty to accommodate, the case is expected to be further appealed to determine whether the Court appropriately addressed an "abandoned" cause of action and whether it correctly transferred an explicit definition from one FEHA provision to another. The scope of the association required currently remains unclear. In the meantime, employers should be cognizant of accommodation requests, even of an informal nature, that address an employee's relative or dependent. In addition, employers should educate employees who are in managerial and supervisory roles to recognize and facilitate such requests.

Wilson Elser invites you to contact a member of our Employment & Labor practice to discuss how issues related to this decision could affect your organization.

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SB 3

SB 3 increases the statewide minimum wage to \$15.00 per hour. This increase will be phased in over the next six years. For employers with 26 or more employees, the increases will take place as follows: January 1, 2017, \$10.50; January 1, 2018, \$11.00; January 1, 2019, \$12.00; January 1, 2020, \$13.00; January 1, 2021, \$14.00; and, January 1, 2022, \$15.00



For employers with 25 or fewer employees, each yearly scheduled increase comes one year later, beginning on January 1, 2018, and capping out on January 1, 2023.

AB908

AB908, which becomes effective January 1, 2017, will increase the benefits provided to individuals in the Paid Family Leave (PFL) and State Disability Insurance (SDI) programs. The new law is applicable for periods of disability commencing on or after January 1, 2018, and expands the level of benefits from 55 percent to either 60 or 70 percent, depending on the applicant's income.

The PFL program provides up to six weeks of wage replacement benefits to employees who take time off work to care for a seriously ill or injured family member or to bond with a minor child (one year old or younger) or upon the adoption of a child or placement of a foster care child. The SDI program provides benefits to individuals who are unable to work due to their own illness or injury.

ABX2-7

Current law prohibits smoking tobacco products inside an enclosed space, such as a place of employment. This will change on January 1, 2017, because ABX2-7 will expand the prohibition on smoking in the workplace. The new law will eliminate most of the previous exemptions, which permitted smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities and employee break rooms.

With these new laws going into effect at the beginning of the year, employers should begin now to plan for their implementation. This may include updating handbooks, posting notices and changing workplace facilities.

Wilson Elser can provide up-to-date information about new and changing legislative requirements for employers. We invite you to contact a member of our Employment & Labor practice to discuss how legislative issues can affect your organization.

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Wilson Elser, a full-service and leading defense litigation law firm (www.wilsonelser.com), serves its clients with nearly 800 attorneys in 30 offices in the United States and one in London. Founded in 1978, it ranks among the top 200 law firms identified by *The American Lawyer* and is included in the top 50 of *The National Law Journal's* survey of the nation's largest law firms. Wilson Elser serves a growing, loyal base of clients with innovative thinking and an in-depth understanding of their respective businesses.

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