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NEW CALIFORNIA EMPLOYMENT LAWS 2016

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California's 2016 legislative session ended, once again, with a flurry of activity in the legislature and by Governor Jerry Brown, resulting in numerous new laws requiring employer action. The end-of-session bills were not the only ones enacted in 2016, however, that affect employers; several important laws were also enacted earlier in the year.

This year's crop of new laws includes further modifications to California's pay equity laws (AB 1676 and SB 1063), restrictions on the use of choice of law and choice of venue provisions in contracts with employees (SB 1241), amendments to the state's Private Attorneys General Act (PAGA) (SB 836), and increases to the state's minimum wage (SB 3), among other changes.

Below is a summary of the most notable developments from California's 2016 legislative session that will require prompt employer action to ensure compliance.

I. NEW LAWS THAT MAY AFFECT ALL EMPLOYERS IN CALIFORNIA

AB 1676 and SB 1063: Amendments to California's Fair Pay Act

Bill #	Effective Date	Topic	Description
AB 1676	January 1, 2017	Amends the California Fair Pay Act (Fair Pay Act) to prohibit wage differentials based solely on prior salary	AB 1676 amends last year's Fair Pay Act to prohibit employers from considering prior compensation as the sole justification for wage differential.
SB 1063	January 1, 2017	Expands the Fair Pay Act to cover race and ethnicity	SB 1063 expands coverage of the Fair Pay Act, which generally prohibits unjustified wage differentials between men and women who perform "substantially similar work," to prohibit unjustified pay differentials for employees of "another race or ethnicity."

The Bill

Last year, California enacted its Fair Pay Act, making several notable changes to preexisting law designed to promote equal pay for men and women. Among other changes, the Fair Pay Act

- required that men and women receive equal pay for "substantially similar work" (not the "same work," as previously required), regardless of whether they work at the same physical location, and

modified the business justification defense that employers could assert to except an otherwise-prohibited pay differential from the equal pay requirement based on a recognized justification, e.g., a seniority, merit, quality- or quantity-based pay system, or other "bona fide factor[s] other than sex, such as education, training, or experience" consistent with a business necessity.

To establish a business justification defense, an employer was required to establish that its business justification (i) accounted for the entire wage discrepancy and (ii) was reasonably relied on by the employer.

AB 1676 amends last year's Fair Pay Act to prohibit employers from considering prior salary as the sole justification for any disparity in compensation. Specifically, AB 1676 amends subsection (a)(3) of Section

1197.5 to add the sentence, "Prior salary shall not, by itself, justify any disparity in compensation." Thus, after AB 1676 takes effect on January 1, 2017, employers will not be able to justify a difference in pay that may exist between a male and female employee who perform substantially similar work by relying, without more, on differences in those employees' compensation history, such as the fact that one of them was paid more in a prior job.

SB 1063 expands the Fair Pay Act's coverage beyond wage differentials between men and women to include wage differentials between members of differing races or ethnicities. Thus, once SB 1063 takes effect on January 1, 2017, when an employee identifies a member of another race or ethnicity who works at the same employer performing "substantially similar work," and receiving higher compensation, lower-paid employee will be able to state a prima facie claim for pay discrimination based on race or ethnicity under California law. Employers will have the same justifications available to an identified wage differential between members of different races or ethnicities as are available to wage differentials between men and women under the Fair Pay Act, subject to the same limitations, to explain the pay differential and avoid liability.

Practical Implications for Employers

Taken together, AB 1676 and SB 1063 expand significantly the reach of California's Fair Pay Act into the realm of race and ethnicity and put a limitation on the defenses that an employer may assert to attempt to justify a pay differential that may exist. Employers should revise their handbooks, policies, and harassment trainings accordingly and include pay differences between members of differing races and ethnicities who perform "substantially similar work" at the same employer (regardless of location) among the pay differentials that they analyze when conducting any kind of pay-equity analysis.

SB 1241: Choice of Law and Forum

Bill #	Effective Date	Topic	Description
SB 1241	January 1, 2017	Enforceability of forum selection and choice of law provisions in agreements required "as a condition of employment"	SB 1241 will allow employees to void contractual provisions required by their employers "as a condition of employment" that (a) mandate a venue or forum for litigation or arbitration outside California or (b) would "[d]eprive the employee of the substantive protection of California law with respect to a controversy arising in California," unless the employee was advised by counsel when entering the contract.

The Bill

SB 1241 will amend Section 925 of the Labor Code to prohibit employers from requiring an employee who "primarily resides and works in California" to agree "as a condition of employment" to either

- a venue or forum selection clause that requires an employee to litigate or arbitrate outside California or
- a provision (most likely a choice of law clause) that would "[d]eprive the employee of the substantive protection of California law with respect to a controversy arising in California."

The new law is not retroactive and will only apply to agreements "entered into, modified, or extended on or after January 1, 2017." The new law also does not apply to a contract entered into with an employee who is "in fact" represented by individual counsel with respect to the agreement's negotiation.

Any contract provision that is prohibited by SB 1241 will be voidable at the employee's election. Employees may seek injunctive relief and any other remedies available under the law, as well as recover their reasonable attorney fees in any action in which they seek to enforce their rights under the new Section 925.

Practical Implications for Employers

Forum selection and choice-of-law provisions have become increasingly common in employment-related agreements between employees in California and employers based out of state. Such agreements can also include confidentiality, intellectual property, and stock agreements. With the enactment of SB 1241, employers will need to carefully evaluate their agreements with California-based employees entered, amended, or renewed on or after January 1, 2017. Employers should also be mindful of this new law when considering the retention of California-based employees who are subject to restrictive covenants purportedly governed by non-California law or subject to a non-California forum selection clause.

SB 1241's language does leave room for uncertainty. For example, the statute fails to define what it means for an employee to "primarily reside[] and work[] in California." Further, by its terms, Section 925 does not appear applicable to all contracts with California employees; rather, it only applies to contracts required "as a condition of employment." Opt-in agreements not required as a condition of employment and/or supported by other consideration may not be affected by SB 1241.

SB 836: State Budget "Trailer Bill," Including Amendments to PAGA

Bill #	Effective Date	Topic	Description
SB 836	July 1, 2016	Expands the California Labor and Workforce Development Agency's (LWDA's) ability to investigate alleged Labor Code violations and involvement in PAGA settlements	Amends PAGA, Cal. Labor Code §§ 2698, *et seq.*, to provide the LWDA with more time and monetary resources to investigate purported Labor Code violations before a private civil action that seeks PAGA penalties may be filed. Also amends PAGA to require parties to submit a copy of any proposed PAGA settlement, and any order approving or denying that settlement, to the LWDA.

The Bill

SB 836 was a budgetary "trailer bill" passed by California's legislature on June 15, 2016, as part of the legislature's approval of Governor Brown's budget. Among the many items covered in the trailer bill, SB 836 expanded the LWDA's ability to investigate alleged Labor Code violations before a claim for civil penalties pursuant to PAGA, Cal. Labor Code §§ 2698, *et seq.*, may be pursued through private civil litigation.

SB 836 provides the LWDA with 60 days to review PAGA notices instead of the previous 30-day time limit. It also requires PAGA plaintiffs to wait 65 days after sending a PAGA notice to file a private civil action under PAGA, as opposed to the prior 33-day time limit. A new $75 filing fee also provides the LWDA with

additional funds to investigate purported Labor Code violations. Further, the LWDA may extend its deadline to issue citations by up to 180 days. SB 836 also allows the LWDA to be involved in the settlement of PAGA claims by requiring the parties to submit any proposed settlement, as well as any order approving or denying that settlement, to the LWDA. Finally, all PAGA notices, and any employer cure notices, must be submitted online to the LWDA.

Practical Implications for Employers

The stated intention of SB 836's PAGA amendments was to "reduc[e] unnecessary litigation and lower[] the costs of doing business in California to support a thriving economic environment." Whether the amendments will achieve this goal is unclear. With the additional time to consider PAGA notices, the LWDA may choose to pursue more administrative enforcement actions. The LWDA may also exercise its right to intervene in more PAGA settlements, both in the class action and PAGA-only context, with respect to whether a reasonable share of the settlement has been allocated to PAGA penalties, 75% of which go to the LWDA. This may add additional complexity to settlement negotiations by adding another active participant to the negotiations.

SB 3: $15 Minimum Hourly Wage for All Workers and Extension of Paid Sick Days to In-Home Supportive Services Workers

Bill #	Effective Date	Topic	Description
SB 3	January 1, 2018	Raises the minimum wage and extends paid sick leave to in-home supportive services workers	SB 3 raises the minimum wage for almost all workers and extends paid sick leave to in-home supportive services workers over a period of seven years.

The Bill

Enacted earlier this year on April 4, 2016, SB 3 will begin taking effect on January 1, 2018. At that time, SB 3 will begin raising the California state minimum wage and extending paid sick leave to in-home supporting services over a multiyear schedule. With respect to the minimum wage, the bill will gradually increase the state minimum wage to $15 an hour over the following seven years and will continue to increase the minimum wage annually to match either the US Consumer Price Index for Urban Wage Earners and Clerical Workers or a 3.5% rate of change, whichever is less. The chart below illustrates the changes in the minimum wage as defined by employer size.

Employer Size (Number of Employees)	Effective Date	Minimum Hourly Wage
25 or fewer	January 1, 2018	$10.50
	January 1, 2019	$11
	January 1, 2020	$12

	January 1, 2021	$13
	January 1, 2022	$14
	January 1, 2023	$15
26 or more	January 1, 2017	$10.50
	January 1, 2018	$11
	January 1, 2019	$12
	January 1, 2020	$13
	January 1, 2021	$14
	January 1, 2022	$15

The bill will also gradually increase the number of paid sick days available to in-home supportive services workers, who have been historically excluded from state paid sick-day mandates. The below chart illustrates this change.

Employer Size (Number of Employees)	Effective Date	Number of Sick Days for Each Year of Employment
Any	July 1, 2018	8 hours or 1 day
25 or fewer	January 1, 2021*	16 hours or 2 days
	January 1, 2023**	24 hours or 3 days
26 or more	January 1, 2020*	16 hours or 2 days
	January 1, 2022**	24 hours or 3 days

*or when the minimum hourly wage for employers of this size reaches $13, whichever is later
**or when the minimum hourly wage for employers of this size reaches $15, whichever is later

SB 3 does not apply to certain employees covered by a valid collective bargaining agreement, certain individuals employed by an air carrier as a flight deck or cabin crew member, and certain public entity employees.

Practical Implications for Employers

Employers should project how the increased minimum wage and extension of paid sick days to in-home supportive service workers will affect staffing decisions and make changes as necessary.

AB 908: Waiting Period and Benefits Under the California Paid Family Leave and State Disability Insurance Programs

Bill #	Effective Date	Topic	Description
AB 908	January 1, 2018 through January 2, 2022	Eliminates the waiting period to receive benefits and increases benefits under the California Paid Family Leave and State Disability Insurance programs	This bill eliminates the one-week waiting period for claims and raises the percentage of wages available as benefits from 55% of an employee's wages to up to 70%.

The Bill

AB 908 modifies how benefits will be provided under the California Paid Family Leave or State Disability Insurance programs, beginning January 1, 2018. First, AB 908 eliminates the one-week waiting period for claims under both programs. The existing programs only deem an employee to be eligible for benefits if, among other things, the individual is unable to perform his or her regular or customary work for a seven-day waiting period during each disability benefit period, and the programs prohibit payments for benefits during this waiting period. Beginning January 1, 2018, AB 908 allows an employee to begin receiving benefits in the first week of his or her eligible life event.

Second, AB 908 changes the percentage of wages available as benefits from 55% of an employee's wages to up to 70%. The maximum weekly benefit amount is currently $1,092. The new benefit structure takes effect on the following schedule:

Employee's Highest Quarterly Wages During the Quarter of the Individual's Disability Base Period ("quarterly wages")	Weekly Benefit Amount
Less than $929	$50
$929 or more AND less than 1/3 of state average quarterly wage	70% of the employee's quarterly wages divided by 13
1/3 of the state average quarterly wage or more	Whichever is greater of either (a) 23.3% of state average weekly wage or (b) 60% of the employee's quarterly wages divided by 13
$1,749.20 or more (only applies to employee benefits for periods of disability that begin on or after January 1, 2022)	55% of the employee's quarterly wages divided by 13

Practical Implications for Employers

The California Paid Family Leave and State Disability Insurance programs are funded by employee payroll deductions. However, employers should take note of how municipal paid leave ordinances interact with AB 908. San Francisco, for instance, recently approved full pay during family leave, which requires employers to pay the difference between the benefit provided by the state and the employee's pay.

AB 1732: All-Gender Single-User Bathrooms

Bill #	Effective Date	Topic	Description
AB 1732	March 1, 2017	Requires that all public single-user bathrooms be accessible to all genders	This bill requires all California business establishments, government buildings, and places of public accommodation to designate their single-user bathrooms as accessible to all genders.

The Bill

AB 1732 requires single-user bathrooms in California business establishments, government buildings, and places of public accommodation to be universally accessible to all genders and identified by signage as all-gender by March 1, 2017. A "single-user" restroom is defined by statute as a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. The law provides that the bathroom must be designated for use by no more than one occupant at a time or for family or assisted use. AB 1732 authorizes inspectors, building officials, or other local officials responsible for code enforcement to inspect for compliance with these provisions during any inspection.

Practical Implications for Employers

All gender-specific signs on single-user bathrooms must be changed to all-gender signs by March 1, 2017. Employers should take note that this law is indicative of a movement toward increased transgender rights and should expect further legislation in this area. For instance, the US Department of Labor's Occupational Safety and Health Administration has taken the position that all employees, including transgender employees, should have access to bathrooms consistent with their gender identity.

SBX 2-5: Electronic Cigarettes Banned in Enclosed Workplaces

Bill #	Effective Date	Topic	Description
SBX 2-5	January 1, 2017	Designates electronic cigarettes as tobacco products	This bill amends a number of laws, including Cal. Labor Code § 6404.5, to designate electronic cigarettes as tobacco products. Therefore, smoking electronic cigarettes will be prohibited in all enclosed workplaces, including covered parking lots, lobbies,

			lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building.

The Bill

Effective January 1, 2017, SBX 2-5 will not only prohibit employees from smoking electronic cigarettes in all enclosed workplaces but also prohibit employers or owner-operators of an owner-operator business from "knowingly or intentionally" permitting or engaging in smoking tobacco products at a place of employment or in an enclosed space.

SBX 2-5 does not apply to a limited number of enclosed workplaces:

- 20% of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment
- Retail or wholesale tobacco shops and private smokers' lounges
- Cabs of motor trucks or truck tractors, if nonsmoking employees are not present
- Theatrical production sites, if smoking is an integral part of the story in the theatrical production
- Medical research or treatment sites, if smoking is integral to the research and treatment being conducted
- Private residences, except for private residences licensed as family daycare homes where smoking is prohibited
- Patient smoking areas in long-term healthcare facilities

Local law enforcement agencies will enforce SBX 2-5 and have the power to fine violators as necessary. Violating the law is an infraction, punishable by a fine not to exceed $100 for a first violation, $200 for a second violation within one year, and $500 for a third and for each subsequent violation within one year.

Practical Implications for Employers

The statute provides that an employer has not "knowingly or intentionally" permitted the smoking of tobacco products at a "place of employment" or in an enclosed space if the employer has taken the following "reasonable steps" to prevent smoking by a nonemployee:

- Posted clear and prominent signs at each entrance to the building or structure that state "No smoking" if smoking is prohibited throughout the building or structure or "Smoking is prohibited except in designated areas" if smoking is prohibited throughout the building or structure
- Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace or owner-operated business, however, "reasonable steps" do not include physically ejecting a nonemployee from the place of employment or owner-operated business or any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee or owner-operator

SB 1007: Right to Certified Shorthand Reporter at Arbitration Proceedings

Bill #	Effective Date	Topic	Description
SB 1007	January 1, 2017	Secures the right to have a certified shorthand reporter in arbitration proceedings	This bill adds § 1282.5 to the Code of Civil Procedure, which allows any party to arbitration the right to a certified shorthand reporter at any deposition, hearing, or proceeding.

The Bill

SB 1007 provides parties to arbitration with the right to have a certified shorthand reporter transcribe proceedings and have that transcription serve as the official record. Requests for a reporter must be made in a demand, response, answer, or counterclaim related to the arbitration or during a prehearing scheduling conference where a deposition, proceeding, or hearing is being calendared. The party requesting the reporter incurs the associated expenses, unless an arbitration agreement provides for them. Parties may also petition the court to compel an arbitrator to allow a reporter to transcribe if the arbitrator refuses their request. SB 1007 takes effect on January 1, 2017.

Practical Implications for California Employers

Employers with arbitration agreements may want to evaluate and update their language to reflect this new requirement. For example, if an agreement makes reference to an arbitrator's discretion on whether to allow a reporter, that language should be omitted or changed to reflect that refusal can be remedied by petitioning the court. If employers wish for a proceeding to be transcribed, they should also make sure to include the request in the response, answer, or counterclaim to an arbitration demand or a subsequent prehearing scheduling conference.

AB 2532: Repeal of Work Authorization Verification Requirements for Certain Employment Services

Bill #	Effective Date	Topic	Description
AB 2532	January 1, 2017	Repeals work authorization verification requirements for certain employment services	This bill removes redundant language requiring certain agencies that provide employment services to verify individuals' legal status or authorization to work before providing those services.

The Bill

Effective January 1, 2017, AB 2532 will repeal § 9601.5 and 9601.7 of the Unemployment Insurance Code. This eliminates redundant language requiring government agencies, community action agencies, and private organizations that contract with the government to provide employment services, such as job training and placements, to verify individuals' legal status or authorization to work before providing those services. Additionally, the law removes a requirement that those agencies post a notice in the workplace that only citizens or persons with valid work authorization may use the agencies' services. Because federal law still requires verifying individuals' eligibility to work before hiring or charging a fee for employment services, this state law does not affect work eligibility. Rather, advocates for the bill meant to remove redundancies and remove "anti-immigrant" language from California law.

Practical Implications for California Employers

Employers should note that this change does not alter any already existing requirements to verify work eligibility before hiring. But employers who provide relevant employment services, such as job training and placements, are no longer required to post the workplace notice that only citizens and others with work authorization may use the services.

SB 269: Disability-Access Litigation Reform

Bill #	Effective Date	Topic	Description
SB 269	May 10, 2016	Reforms disability-access litigation	This bill amends and adds sections of the Civil Code and Government Code related to disability access, providing a 15-day grace period for certain violations by small businesses, creating a rebuttable presumption that certain technical violations do not cause a plaintiff "difficulty, discomfort, or embarrassment," and exempting businesses from liability for violations identified by a Certified Access Specialist (CASp) for 120 days after receiving the CASp's report.

The Bill

SB 269 took effect on May 10, 2016, and is intended to curtail the number of lawsuits under California's supplements to the federal Americans with Disabilities Act (ADA) that provide persons with disabilities with the right to sue for damages if they encounter certain violations and experience "difficulty, discomfort, or embarrassment" as a result.

First, the bill makes it harder to bring claims against small businesses when the claims are based on certain technical violations that are cured within 15 days of the complaint. The bill defines "small businesses" as those that have employed an average of 25 or fewer employees over the last three years and have an average of less than $3.5 million in annual gross receipts over the last three years. For these small businesses, the bill creates a rebuttable presumption that the following technical violations do not cause a plaintiff "difficulty, discomfort, or embarrassment" if the violations are cured within 15 days of service of the summons and complaint:

- Interior signs, other than those identifying the location of accessible facilities that are not actually accessible
- The lack of exterior signs, other than parking signs and directional signs, including signs that indicate the location of accessible pathways or entrance and exit doors when not all pathways and entrance and exit doors are accessible
- The exact order of parking signs, provided that they are clearly visible and indicate the location of accessible parking
- The color of parking signs, provided that the background color contrasts with the color of the information on the sign
- The color of the parking lot striping, provided that it exists and contrasts enough with the color of the surface on which it is applied
- Faded or damaged paint marking otherwise fully compliant parking spaces, as long as it is still reasonably visible
- The presence or condition of detectable warning surfaces on ramps, if the ramps are not part of a pedestrian path that intersects with a vehicle lane or other hazardous area

Second, the bill creates a 120-day exemption from liability for violations identified by a CASp for certain businesses (50 or fewer employees). Under the bill, the Division of the State Architect will annually publish a list of CASps on its website, as well as easily accessible information about which businesses have obtained a CASp, been inspected by said CASp, and the date of any such inspections. Once a business obtains a CASp inspection, the liability exemption period begins to toll after it receives the report, allowing time to resolve the issues identified.

In addition to these procedural changes, AB 269 will require local government agencies to provide materials to local businesses about ADA requirements and other disability-access regulations.

Practical Implications for California Employers

Small-business employers that face disability-access litigation may benefit from the 15-day allowance to cure technical violations and the rebuttable presumption that certain violations do not cause "difficulty, discomfort, or embarrassment."

With regard to preventing disability-access litigation, obtaining a CASp report might help reduce litigation risk in some situations because it could identify potential violations before they are alleged by potential plaintiffs. Employers may also want to consider working through counsel to obtain a CASp-type report as an alternative.

AB 1843: Juvenile Criminal History of Applicants for Employment

Bill #	Effective Date	Topic	Description
AB 1843	January 1, 2017	Prevents disclosure of juvenile criminal history	This bill prohibits employers from asking applicants to disclose their juvenile criminal history and from using an applicant's juvenile criminal history in making employment decisions.

The Bill

Effective January 1, 2017, AB 1843 will amend Labor Code Section 432.7 to prohibit employers from asking applicants to disclose their juvenile criminal history, including juvenile convictions, arrests, detentions, processing, supervision, and court dispositions. Employers may not use juvenile criminal history as a factor in hiring, promotion, termination, or training.

AB 1843 has a limited exception that allows employers at health facilities to inquire into an applicant's juvenile criminal background if (i) the applicant committed a felony or misdemeanor relating to sex crimes or certain controlled substances and (ii) a final ruling or adjudication was made within five years of the employment application. However, health facilities cannot request information regarding sealed juvenile records.

Practical Implications for Employers

Employers should ensure that applications for employment and other human resources (HR) materials comply with AB 1843. Additionally, supervisors and HR personnel should be trained to avoid prohibited conduct.

AB 2337: Notification of Rights/Victims of Domestic Violence, Sexual Assault & Stalking

Bill #	Effective Date	Topic	Description
AB 2337	7-1-2017	Notifies new and current employees of their rights as potential victims of domestic violence, sexual assault, and stalking	This bill requires employers to notify new employees of current rights to victims of domestic violence, sexual assault, and stalking under the current provisions of Labor Code Section 230.1. Employers must also provide notice to current employees on request.

The Bill

Labor Code 230.1 prohibits employers with 25 or more employees from discharging, discriminating, or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking from taking time off for specified purposes, including seeking medical attention; obtaining services from a domestic violence shelter, program, or rape crisis center; obtaining psychological counseling; and participating in safety planning. Any employee who is discharged, threatened with discharge, demoted, suspended, discriminated, or retaliated against because the employee has taken time off for these purposes is entitled to restatement, lost wages, work benefits, and equitable relief and to file a complaint with the Division of Labor Standards Enforcement.

AB 2337 requires employers to automatically provide new employees with notice of their rights under Labor Code Section 230.1 beginning July 1, 2017. Employers must also provide current employees with notice of their rights on request. The labor commissioner will provide a form, which is required to be available online by July 1, 2017, that employees may use to comply with these provisions. Employers are not required to comply with AB 2337 until the labor commissioner makes the form available.

Practical Implications for Employers

Employers should ensure that they have obtained the labor commissioner's form notice and that they automatically provide it to all new hires after July 1, 2017, and to all current employees on request.

Additionally, employers should train supervisors and HR personnel to avoid conduct that may be perceived as retaliatory. Employers should be cautious when terminating or disciplining an employee who requests time off as a result of domestic violence, sexual assault, or stalking.

AB 2535: Itemized Statement and Expansion of Exempt Employees

Bill #	Effective Date	Topic	Description
AB 2535	January 1, 2017	Requires information on total work hours in itemized statements	Employers need not provide itemized wage statements that show total hours worked by employees if an employee is exempt from payment of minimum wage and overtime under specified statutes or any applicable order of the Industrial Welfare Commission.

The Bill

AB 2535 amends Labor Code Section 226. Section 226 previously required that employers provide their employees with an itemized wage statement showing the total hours that each employee worked, unless an employee's compensation was solely based on a salary and the employee was exempt from overtime payment under a specified statute or any applicable order of the Industrial Welfare Commission.

AB 2535 expands the scope of exempt employees and clarifies that employers need not list the number of hours worked on wage statements for employees who are exempt from minimum wage and overtime requirements under specified statutes or any applicable order of the Industrial Welfare Commission. The bill takes effect on January 1, 2017.

Practical Implications for California Employers

Many employers previously have not provided total hours worked to any exempt employees whose compensation was not based on hours worked. This bill was passed as a response to *Garnett v. ADT*, LLC, 139 F. Supp. 3d 1121 (2015), a recent federal case in which the court decided that total hours worked must be provided to outside salespeople under the Labor Code Section 226. AB 2535 clarifies that employers are no longer required to provide total hours worked in their itemized wage statements for employees exempt from minimum wage and overtime requirements. Exempt employees may include executive, administrative, or professional employees; outside salespersons; and computer software professionals paid on a salaried basis. Employers should check whether their employees are exempt as provided under specified statutes in Labor Code Section 226(j) or under the applicable Industrial Welfare Commission Order.

SB 1001: Protection from Unfair Immigration-Related Practices in Employment

Bill #	Effective Date	Topic	Description
SB 1001	January 1, 2017	Prevents unfair immigration-related practices	SB 1001 expands the existing law on unfair immigration-related practices. It specifies unlawful employment practices and provides that a job applicant or an employee who is subject to an unfair immigration-related practice may bring a civil action for equitable relief and any applicable damages or penalties.

The Bill

SB 1001 adds Section 1019.1 to the Labor Code. It states that job applicants or employees who suffer an "unfair immigration-related practice" can file a complaint with the Division of Labor Standards Enforcement (DLSE) for equitable relief and enforcement pursuant to Labor Code Section 98.7. Under Section 98.7, the labor commissioner may take action necessary to remedy the violation of 1019.1. Even if the labor commissioner determines no violation has occurred, the complainant may, after notification of the determination to dismiss a complaint, bring a civil action for appropriate relief. Appropriate relief includes rehiring or reinstating the complainant, reimbursing lost wages and interest, and providing other equitable relief. The bill also provides that a violation can result in a penalty of up to $10,000 per violation. Under this bill, unfair immigration-related practices include the following:

- Requesting more or different documents than required under federal law
- Refusing to honor documents tendered that on their face reasonably appear to be genuine
- Refusing to honor documents or work authorization based on specific status or term of status that accompanies the authorization to work
- Attempting to reinvestigate or verify an incumbent employee's authorization to work using an unfair immigration-related practice

Practical Implications for California Employers

Employers should evaluate their policy on immigration-related employment practices. Violation may lead to investigation by the labor commissioner, civil litigation, and imposition of up to $10,000 in penalty.

II. NEW LAWS POTENTIALLY AFFECTING EMPLOYERS IN SPECIFIC INDUSTRIES OR MARKET SECTORS

AB 2230: Exempt Calculations for Private School Teachers

Bill #	Effective Date	Topic	Description
AB 2230	July 1, 2017	Alters the overtime and meal/rest break exemption calculation for private school teachers	This bill changes the calculation to determine whether teachers at California private schools are exempt from overtime and mandatory meal and rest breaks so that it is tied to private school wages rather than the consumer price index.

The Bill

Beginning July 1, 2017, teachers at private schools will be exempt from overtime and mandatory meal and rest breaks if they earn **more than** one of the following:

- No less than 100% of the lowest salary that any school district offers to a person who is in a position that requires a valid California teaching credential (and is not employed in that position pursuant to an emergency permit, intern permit, or waiver)
- No less than 70% of the lowest schedule salary that a school district or county offers in which the private elementary or secondary institution is located in a position that requires a valid California teaching credential (and is not employed in that position pursuant to an emergency permit, intern permit, or waiver)

Practical Implications for Employers

Private school employers in California should ensure that they have the appropriate information each school year to determine whether their teachers are exempt under the new law.

AB 1066: Phase-In Overtime for Agricultural Workers Act of 2016

Bill #	Effective Date	Topic	Description
AB 1066	January 1, 2017	Applies wage and hour law to agricultural workers	This bill removes the exemption for agricultural employees regarding hours, meal breaks, working conditions, and wage requirements. It also creates a schedule that would phase in overtime requirements for agricultural workers from 2019 to 2022.

The Bill

AB 1066 amends Labor Code Section 554 and adds Chapter 6 to Part 2 of Division 2 of the Labor Code. AB 1066 removes the exemption for agricultural employees regarding wage and hour restrictions, meal breaks, and other working conditions. All provisions of Chapter 1 regarding compensation or overtime apply to workers in an agricultural occupation beginning January 1, 2017, with the exception of overtime payment. The bill requires employers to pay agricultural workers overtime over a four-year phase-in process beginning January 1, 2019. Employers with fewer than 25 employees will have an extra three years to comply with the phase-in process.

Agricultural workers' phase-in schedule for overtime payment is as follows:

Effective Date for Employers with More Than 25 Employees **and** **(Date for Employers with 25 or Fewer Employees)**	January 1, 2019 (January 1, 2022)	The employer must pay 0.5 times an employee's regular rate of pay for all hours worked over 9.5 in any workday or over 55 hours in any workweek.
	January 1, 2020 (January 1, 2023)	The employer must pay 1.5 times an employee's regular rate of pay for all hours worked over 9 in any workday or over 50 hours in any workweek.
	January 1, 2021 (January 1, 2024)	The employer must pay 1.5 times an employee's regular rate of pay for all hours worked over 8.5 in any workday or over 45 hours in any workweek.
	January 1, 2022 (January 1, 2025)	The employer must pay 1.5 times an employee's regular rate of pay for all hours worked over 8 in any workday or over 40 hours in any workweek.

Practical Implications for California Employers

Employers with employees who work in agricultural occupations should ensure that the employers comply with the current law regarding wage and hour restrictions, meal breaks, and other working condition laws by January 1, 2017. Employers with more than 25 employees should also ensure that their overtime payment policies comply with the phase-in schedule beginning January 1, 2019. Employers with 25 or fewer employees have an extra three years to make the changes.

SB 693: Apprenticeship Graduation Percentage Requirements for Skilled and Trained Workforce for Public Contracts

Bill #	Effective Date	Topic	Description
SB 693	January 1, 2017	Implements skilled and trained workforce requirements for public contracts	The bill requires that the "skilled and trained workforce" employed to perform work on a contract for a public entity is composed of a certain percentage of skilled journey persons who are "graduates of an apprenticeship program" for their applicable occupation. A public entity may require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

The Bill

SB 693 adds Chapter 2.9 to the Public Contract Code. This chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder or contractor will use a skilled and trained workforce to complete a contract. A public entity may require a bidder, contractor, or other entity to use a "skilled and trained workforce" to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

A "skilled and trained workforce" is one in which all workers in an apprenticeable occupation (i.e., an occupation approved by the chief of the Department of Industrial Relations' Division of Apprenticeship Standards) in the building and construction trades must be either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief. Skilled journeypersons in "skilled and trained workforces" must comply with certain apprenticeship graduation percentage requirements as follows over the next four years.

For Work Performed on or After:	Required Apprenticeship Graduation Rate
January 1, 2017	At least 30% of the skilled journeypersons are graduates of an apprenticeship program.
January 1, 2018	At least 40% of the skilled journeypersons are graduates of an apprenticeship program.
January 1, 2019	At least 50% of the skilled journeypersons are graduates of an apprenticeship program.
January 1, 2020	At least 60% of the skilled journeypersons are graduates of an apprenticeship

	program.

A “graduate of an apprenticeship program” is either

- an individual who has been issued a certificate of completion under the authority of the California Apprenticeship Council or
- an individual who has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal secretary of labor.

Practical Implications for California Employers

As a contractor or a bidder, the employers of a skilled and trained workforce must ensure that they meet the requirements when contracting for work with a public entity. The requirements apply to the contractor and each of its subcontractors at every tier. While the contract is being performed, employers should be prepared to provide a report demonstrating compliance on a monthly basis. Failure to provide a complete report may allow the public agency to withhold further payments until it receives a complete report. Moreover, employers should understand that the report will be open to public inspection.

CONTACTS

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