

An Overview of New 2018 Laws Affecting California Employers

In 2017, California enacted new employment laws that may affect your business's day-to-day operations in 2018 and beyond.

Employers must be aware of significant changes in key areas, such as a small business parental leave law and new hiring restrictions. Other new laws make small changes to different parts of existing law or may only affect employers in specific industries.

All new legislation goes into effect on January 1, 2018.

Parental Leave for Small Employers

An important new law requires that small employers provide new parents with up to 12 workweeks of unpaid leave.

SB 63, the New Parent Leave Act, requires small businesses with 20 or more employees to provide eligible employees up to 12 weeks of unpaid, job-protected leave to bond with a new child — leave that must be taken within one year of the child's birth, adoption or foster care placement. SB 63 requires employers to provide parental leave only for baby bonding; it does not require employers to provide leave for other reasons, such as a family member's medical issue.

The New Parent Leave Act will have the greatest impact on employers with 20 to 49 employees who are not currently required to provide baby bonding leave under the federal Family and Medical Leave Act or the state California Family Rights Act.

If an employee takes this leave, an employer must maintain and pay for coverage under a group health plan at the same level and conditions that coverage would have been provided if the employee had continued working.

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as a small business parental leave law and new hiring restrictions.

Before the leave starts, an employer must provide the employee with a guarantee of reinstatement to the same or comparable position. Failure to provide the guarantee will be deemed a violation of the law, as if the employer refused to provide leave.

Employers can be sued if they don't comply with provisions of the Act.

Hiring Practices and Enforcement

Employers will see significant changes to their hiring practices in 2018, including applicant selection processes and compliance with Form I-9 and immigration laws.

Ban-the-Box Law

AB 1008 prohibits employers with five or more employees from asking about criminal history information on job applications and from inquiring about or considering criminal history at any time before a conditional offer of employment has been made. There are limited exemptions for certain positions, such as those where a criminal background check is required by federal, state or local law.

Once an employer has made a conditional offer of employment, it may seek certain criminal history information. However, before denying employment because of a criminal conviction, these specific steps must be followed:

- The employer must first conduct an individualized assessment to determine whether the conviction has a direct and adverse relationship with the job's specific duties that justifies denying employment.
- Any preliminary decision not to hire because of a conviction history requires written notice to the applicant, who must be given the opportunity to respond. A specific timeline and process for this step must be followed. The employer must consider any information provided by the applicant before making a final decision.
- Any final decision to deny employment because of the criminal conviction requires another specific written notice to the applicant.

No More Salary History Questions

AB 168 bans employers from asking about a job applicant's prior salary, compensation or benefits (either directly or through an agent, such as a third-party recruiter).

In addition, employers cannot rely on salary history information as a factor in determining whether to hire the applicant or how much to pay the applicant. However, an employer may consider salary information that is voluntarily disclosed by the applicant without any prompting.

AB 168 further requires an employer to provide a job applicant, upon reasonable request, with the pay scale for the position.

Employers can no longer ask applicants about prior salary.

Worksite Immigration Enforcement and Protections

The Immigrant Worker Protection Act (AB 450) provides workers with protection from immigration enforcement while on the job and imposes varying fines from \$2,000 to \$10,000 for violating its provisions.

AB 450's provisions include the following:

- Employers cannot give federal immigration enforcement agents access to non-public areas of a business without a judicial warrant.
- Employers cannot provide these enforcement agents access to employee records without a subpoena or judicial warrant. This prohibition does not apply to Form I-9 or other documents for which a Notice of Inspection was provided to the employer.
- Employers must follow specific requirements related to Form I-9 inspections. Those requirements are to: » Post a notice to all current employees informing them of any federal immigration agency's inspections of Forms I-9 or other employment records within 72 hours of receiving the Notice of Inspection. This notice must also be given to the collective bargaining

representative, if any. » Provide a copy of the Notice of Inspection to an affected employee upon reasonable request. » Once the inspection is over, provide each “affected employee” and the employee’s collective bargaining representative a copy of the inspection results and a written notice of the employer’s and employee’s obligations arising from the inspection. This must be done within 72 hours of receiving the results. An “affected employee” is one identified by the inspection results as potentially lacking work authorization or having document deficiencies.

This bill also makes it unlawful for employers to reverify the employment eligibility of current employees in a time or manner not allowed by federal employment eligibility verification laws.

Alcohol Servers

AB 1221 requires that businesses licensed to serve alcohol make sure each alcohol server receives mandatory training on alcohol responsibility and obtains an alcohol server certification. These requirements go into effect in 2021, after the course is developed by the Department of Alcoholic Beverage Control.

A new law provides California workers with protection from immigration enforcement while on the job.

Discrimination, Harassment and Retaliation Protections

Several new laws expand employee protections for 2018. Many of these laws focus on gender equality and gender identity/gender expression protections.

Harassment Prevention Training: Gender Identity/Gender Expression, Sexual Orientation

California employers with 50 or more employees must provide supervisors with two hours of sexual harassment prevention training every two years.

Under SB 396, covered employers will have to make sure that any mandatory training course they use also discusses harassment based on gender identity, gender expression and sexual orientation.

SB 396 also requires employers to display a poster on transgender rights that the Department of Fair Employment and Housing will develop.

Harassment Prevention Training: Farm Labor Contractors

SB 295 affects the sexual harassment prevention training that must be provided to receive a farm labor contractor’s license. The bill now requires that training be conducted or interpreted into a language understood by the employee, and that the Labor Commissioner receive a list of harassment prevention training materials used and the number of individuals trained.

Gender Identification: Female, Male or Nonbinary

SB 179 will allow California residents to choose from three equally recognized gender options — female,

male or nonbinary — on state-issued identification cards, birth certificates and driver's licenses. For changes to birth certificates, the law is effective on September 1, 2018. For changes to driver's licenses, the law is effective on January 1, 2019.

The bill also makes it easier for individuals to change their gender on legal documents, effective on September 1, 2018.

Employment Discrimination: Gender Neutral Language

AB 1556 revises California's Fair Employment and Housing Act by deleting gender-specific personal pronouns in California's anti-discrimination, anti-harassment, pregnancy disability and family/ medical leave laws by changing "he" or "she," for example, to "the person" or "the employee."

Anti-discrimination protections continue to expand.

Fair Pay Act Expansion

AB 46 extends California's Fair Pay Act — which prohibits wage discrimination on the basis of gender, race and ethnicity — to cover public employers; existing law only covers private employers.

Data Collection: Sexual Orientation

AB 677 requires that, beginning no later than July 1, 2019, various state labor agencies collect voluntary, self-identified information pertaining to sexual orientation and gender identity in the regular course of collecting other types of demographic data.

LGBT Rights for Long-Term Care Facility Residents

SB 219 enacts the Lesbian, Gay, Bisexual, and Transgender (LGBT) Long-Term Care Facility Residents' Bill of Rights, strengthening anti-discrimination protections for LGBT individuals living in long-term care facilities. Among other things, SB 219 makes it unlawful to willfully and repeatedly fail to use a resident's preferred name or pronoun or to deny admission to a long-term care facility because of gender identity or sexual orientation. Facilities are required to post a notice about the protections and follow recordkeeping requirements.

Human Trafficking

AB 260 extends the list of businesses that must post a human trafficking information notice to include hotels, motels and bed and breakfast inns.

Meanwhile, SB 225 requires the human trafficking notice to include a new number for those who wish to send text messages. Businesses are not required to post the updated notice until on or after January 1, 2019.

Anti-Discrimination Protections for Veterans

AB 1710 expands the current protections for members of the armed services by prohibiting discrimination in all “terms, conditions, or privileges” of employment. This legislation conforms state law to the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) by protecting servicemembers in civilian jobs from hostile work environments.

Health Facilities: Whistleblower Protections

AB 1102 increases the maximum fine for a violation of whistleblower protections in healthcare facilities from \$20,000 to \$75,000.

Employer notice requirements will change as a result of new laws.

Wage and Hour

A few new California laws affect employers’ wage-and-hour obligations in 2018, some of which are related to enforcement.

Keep in mind that on January 1, 2018, the state minimum wage increases to \$10.50 per hour for employers with 25 or fewer employees and to \$11 per hour for employers with 26 or more employees. To learn more, download the 2018 Minimum Wage Hike Brings Changes for California Employers white paper (nonmember download).

And remember to determine whether any local minimum wage ordinances apply to your business.

Labor Law Enforcement, Retaliation

SB 306 allows the Labor Commissioner to investigate an employer — even without a complaint from an employee — when the Labor Commissioner suspects retaliation or discrimination against a worker during a wage claim or other investigation. The Labor Commissioner also can obtain a court order prohibiting an employer from firing or disciplining an employee, even before completing its investigation or determining retaliation has occurred. SB 306 also creates a new citation process for alleged violations and penalties.

Increased Liability for Construction Contractors

For certain private construction contracts entered into after January 1, 2018, AB 1701 imposes liability onto the general contractor for any unpaid wages, benefits or contributions that a subcontractor owes to a laborer who performed work under the contract.

Barbering and Cosmetology

Two new laws affect barbering and cosmetology employers and licensees.

SB 490 allows workers licensed under the Barbering and Cosmetology Act to be paid a commission in addition to a base hourly rate if certain conditions are met.

AB 326 requires Board of Barbering and Cosmetology schools to include information on physical and sexual assault awareness in the required health and safety course for licensees beginning July 1, 2019.

Remember to determine whether any local minimum wage ordinances apply to your business.

Workplace Safety and Workers' Compensation

SB 258 relates to the safety of designated cleaning products, including general cleaning, air care, automotive, or polish or floor maintenance products used primarily for janitorial, industrial or domestic cleaning purposes. Provisions of SB 258 state that: • Manufacturers of the designated cleaning products must disclose the chemicals in those products and create product safety data sheets; and • Employers that have these designated cleaning products in their workplace must obtain the safety data sheets from the manufacturers and make them available at the workplace.

As for workers' compensation, several bills were signed into law for 2018.

AB 44 requires employers to provide a nurse case manager to advocate for employees injured during the course of employment by an act of domestic terrorism, but only when the governor has declared a state of emergency. The Division of Workers' Compensation will adopt regulations on the scope of the employer's obligations and the contents of a required notice.

SB 189, which is effective on July 1, 2018, clarifies when owners, officers of businesses, members of boards of directors, general partners in a partnership and managing members of LLCs may be excluded from workers' compensation laws.

AB 1422 extends the automatic stay on liens filed by medical providers who are charged with criminal fraud.

SB 489 extends the billing deadline for providers of emergency treatment services from 30 days to 180 days.