Overview of New 2016 Laws Affecting California Employers

California enacted many new laws that will affect the day-to-day operations of California businesses in 2016.

Some of the new laws make important changes to existing state law. Other new laws make small changes to different parts of existing law.

Also, do not forget that the minimum wage increases on January 1, 2016, to $10 per hour. This is not a new law, having been signed in since 2013, but this is the last mandatory increase from that law.

Unless specified, all new legislation goes into effect January 1, 2016.

This white paper identifies some of the noteworthy new laws from the California Legislature.

Leaves of Absence and Benefits

Several new laws affect leaves of absence.

Mandatory Paid Sick Leave Amendments

Last year, the Healthy Workplaces, Healthy Families Act was signed into law and required employers to begin providing the mandatory paid sick leave (PSL) benefit beginning July 1, 2015. But after the law was already in effect, the Legislature passed AB 304 which made several substantial amendments to the laws. The amendments became effective on July 13, 2015.

Among other things, the amendments:

• Clarify who is a covered worker;
• Provide alternative accrual methods other than one hour for every 30 hours worked;
• Clarify protections for employers that already provided PSL or paid time off before January 1, 2015; and
• Provide alternative methods for paying employees who use PSL.

**School Activities Leave**

SB 579 expands the ability of employees to take protected time off from work for school or child care related activities. It allows an employee protected time off to find a school or a licensed child care provider and to enroll or re-enroll a child, and time off to address child care provider or school emergencies. SB 579 also expands the categories of employees eligible to take time off for a child. This law applies to employers with 25 or more employees.

**Kin Care**

SB 579 makes technical amendments to California’s “kin care” law to conform to the mandatory PSL law. SB 579 allows employees to use kin care for the same purposes specified by the PSL law and defines “family member” under the kin care law the same as under PSL.

**Unemployment Insurance and Electronic Reporting**

AB 1245 requires electronic reporting for unemployment insurance reports submitted to the Employment Development Department. It also requires employers to remit contributions for unemployment insurance premiums by electronic funds transfer. The requirements will apply to employers with 10 or more employees beginning January 1, 2017, and to all employers beginning January 1, 2018.

**State Disability Insurance Eligibility: Waiting Periods**

SB667 changes the eligibility waiting period requirements when an individual files a second disability claim for the same or related condition as his/her initial claim. SB 667 also extends the time between claims that will considered one disability benefit period. This law is effective July 1, 2016.

**Discrimination and Retaliation Protections**

Several new laws expand employee protections for 2016.

**Gender Wage Equality**

The Fair Pay Act revises Labor Code section 1197.5, which deals with gender pay inequality or disparity. Under existing California law, employers cannot pay an employee less than the rate
paid to an opposite-sex employee in the same establishment for equal work on jobs that require equal skill, effort and responsibility, and could face a lawsuit for such disparity.

The Fair Pay Act revises and expands this prohibition. It eliminates the requirement that the pay difference be “within the same establishment” and eliminates use of the terms “equal work” for “equal skill, effort, and responsibility.”

Instead, the Act prohibits an employer from paying any of its employees less than employees of the opposite sex for “substantially similar work, when viewed as a composite of skill, effort and responsibility.” In addition, the legislation places specific requirements on employers to affirmatively show that any wage differential is not unlawful but is instead based entirely and reasonably upon one or more of the acceptable listed factors, including seniority and merit systems or other bona fide factors coupled with a showing of “business necessity,” as defined.

The Fair Pay Act prohibits employers from terminating, discriminating or retaliating against an employee who exercises his/her rights under the Act or assists others in exercising their rights. Employers also can’t prohibit employees from disclosing their wages, discussing the wages of others or asking about another employee’s wages. The Act does not obligate anyone to disclose wages when asked.

It’s important to remember that the ability of employees to discuss wages is already protected by other existing state and federal laws, even though the Fair Pay Act also includes this same protection.

**Reasonable Accommodation and Retaliation**

AB 987 clarifies that an employer can’t retaliate or discriminate against an employee for requesting a reasonable accommodation for a disability or religion, regardless of whether the request was granted. The law clarifies that the mere act of making the request is protected conduct under the Fair Employment and Housing Act.

**Wage and Hour**

Several new laws will increase employers’ wage-and-hour obligations in 2016. Many of the new laws in the wage-and-hour arena deal with increasing penalties and expanding liability, instead of imposing significant new obligations on employers.

**Private Attorneys General Act**
AB 1506 amends the Private Attorneys General Act (PAGA) to allow employers a limited right to correct two types of itemized wage statement violations before an employee may bring a civil action under PAGA. An employer will now be allowed to correct violations involving: (1) a failure to provide employees with an itemized wage statement that contains the inclusive dates of the pay period; or (2) a failure to provide employees with an itemized wage statement that contains the name and address of the legal entity.

This law was “urgency legislation” and became effective immediately when the governor signed it on October 2, 2015.

**Labor Commissioner Expanded Enforcement Powers**

SB 588 makes several changes to the Labor Code and expands the Labor Commissioner’s ability to enforce laws.

In order to enforce a judgment for nonpayment of wages, SB 588 allows the Labor Commissioner to issue levies and liens on employer property and to issue “stop orders” – preventing the employer from continuing to conduct business in the state.

SB 588 also specifies that an individual acting on behalf of the employer can be personally liable for violating certain provisions of the Labor Code.

**Labor Commissioner Enforcement of Local Laws**

AB 970 allows the Labor Commissioner to now investigate and enforce local overtime and minimum wage laws, such as the local minimum wage ordinances enacted by many cities. AB 970 also gives the Labor Commissioner new authority to issue citations and penalties when employers fail to reimburse employees for employer-required expenses.

**Hiring**

**Unlawful Use of E-Verify**

AB 622 prohibits employers from using the federal E-Verify system at a time or in a manner not required by federal law to check the employment authorization status of an existing employee or of an applicant who has not received an offer of employment.

Employers can still use E-Verify, in accordance with federal law, to check the employment authorization status of a person who has been offered employment.
AB 622 also requires employers who use E-Verify to comply with specific employee notification requirements when they receive notice from a federal agency that the submitted E-Verify information does not match federal records.

There is a penalty of $10,000 for each violation.

**Worker’s Compensation**

Several bills relating to workers’ compensation were signed into law in 2015:

- **AB 1124**: Requires the Division of Workers’ Compensation to establish a formulary for prescription medications in the workers’ compensation system by July 1, 2017.
- **SB 632**: Ensures that all injured workers receive benefits by clarifying that workers cannot be denied benefits based on citizenship or immigration status.
- **AB 438**: Requires specified workers’ compensation forms, notices and fact sheets to be made available in additional languages by January 1, 2018.

The Division of Worker’s Compensation also recently finalized regulations revising certain benefit notices for January 1, 2016. Revisions were made to the *Claim Form and Notice of Potential Eligibility* (DWC 1).