



IN-DEPTH DISCUSSION

With Governor Brown's Signature, California Employers Face a Gauntlet of New Laws

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The October 15, 2017 deadline has come and gone for Governor Jerry Brown to weigh the bills passed by the California legislature this year. Governor Brown has now signed into law a jaw-dropping number of bills that pertain to labor and employment issues, ranging from teacher retirement funding to hazardous materials notification.

Now that the dust has settled in Sacramento, we briefly review several of the most significant developments applicable to private employers operating in California. On the whole, and unless otherwise indicated, these new laws will take effect on January 1, 2018, leaving employers precious little time to prepare.

Antidiscrimination Protections. With Governor Brown's approval, the Golden State has taken steps to enhance employment protections for veterans. [AB 1710](#) expanded protections for military personnel by prohibiting discrimination in all "terms, conditions, or privileges" of employment.

Antiharassment Training. Certain California employers must adapt to coming changes in state antiharassment training requirements. First, under [SB 396](#), employers with five or more employees must prominently post a workplace notice, to be developed by the state Department of Fair Employment and Housing, regarding transgender rights. In addition, employers with 50 or more employees—employers who are already required to provide sexual harassment training—must include training addressing harassment based on gender identity, gender expression, and sexual orientation. Such training must be conducted by educators with knowledge and expertise in these topics and must include practical examples.

Second, farm labor contractors must contend with changes to the law concerning sexual harassment training. To be issued a farm contractor license, such entities must (among other things) provide sexual harassment training to all personnel, including supervisory and agricultural employees. Under [SB 295](#), this training must be conducted in or interpreted into the language understood by the employee. Additional application requirements also will apply, including an obligation to provide a list of all antiharassment training materials or resources used in the prior calendar year.

Construction Contractor Liability. For certain construction contracts entered into on or after January 1, 2018, [AB 1701](#) provides that direct contractors must assume and are liable for unpaid wages, benefits, or contributions that a subcontractor owes for labor connected to the contract. AB 1701 further requires subcontractors to provide required payroll records upon a direct contractor's request. Governor Brown issued a [memo](#) upon signing AB 1701, explaining that the sponsors of the law committed to sponsoring legislation next year to clarify any confusion over the scope of this new law. Accordingly, direct contractors in this industry should not only familiarize themselves with AB 1701, but should stay tuned for future revisions.

Criminal History. As expected, Governor Brown approved a broadened, statewide "ban-the-box" provision, in [AB 1008](#). Pursuant to AB 1008, all employers in California with five or more employees are forbidden from asking an applicant to disclose conviction information until the applicant is determined qualified for the position. Consideration of an applicant's criminal history will be permissible only after the employer has made a conditional offer of employment. Once that offer has been made and the criminal history obtained, AB 1008 further provides that the employer cannot deny an applicant a position solely or in part because of conviction history until the employer performs an individualized assessment. Employers that use criminal records to screen applicants should act promptly to review and update their applicant screening procedures.¹

Enforcement Actions. Under [SB 306](#), the state Division of Labor Standards Enforcement can initiate an investigation of employers it suspects discharged or otherwise discriminated against an individual in violation of any law under the department's jurisdiction—with or without receiving any complaint from an allegedly aggrieved employee. The department can proceed without a complaint when suspected retaliation occurred during the course of adjudicating a wage claim, during a field inspection, or in instances of suspected unlawful immigration-related threats.

Human Trafficking Posting Requirements. California law currently requires certain types of employers (*i.e.*, alcohol retailers, airports, emergency rooms, and adult or sexually-oriented businesses) to post notice concerning human trafficking and the hotlines available for assistance. [AB 260](#) extends this requirement to hotels, motels, and bed and breakfast inns. In addition, [SB 225](#) will require the necessary notice to state that an individual may text a specific number to access support and services.

Immigration Enforcement. Consistent with California's developing role as a "sanctuary state,"² [AB 450](#) generally restricts public and private employers from voluntarily permitting federal immigration officials to enter nonpublic areas of a workplace. Access is nonetheless required if otherwise required by federal law or if the immigration agent has a judicial warrant. This new law imposes certain duties as well, including a notice requirement.³

Parental Leave. Under [SB 63](#), the New Parent Leave Act, certain California employers must provide employees with 12 weeks of unpaid, job-protected parental bonding leave. This new statute applies to private, state, and municipal employers that directly employ 20 to 49 employees within 75 miles of each other. To be eligible, employees must have more than 12 months of service and at least 1,250 hours of service with the covered employer during the 12-month period prior to commencing leave. Employees are entitled to utilize any type of accrued paid time off, such as paid vacation and sick leave, during the parental leave. In addition to providing 12

weeks of leave, employers must maintain and pay for the employee's continued coverage under a group health plan at the level and under the same conditions that coverage would have been provided had the employee continued to work.⁴

Salary History & Equal Pay. Governor Brown also approved a couple of measures concerning equal pay. First, [AB 168](#) bans employer inquiries into an applicant's prior salary history. Under AB 168, no employer may rely on an applicant's prior salary history "as a factor in determining whether to offer employment . . . or what salary to offer an applicant." Moreover, an employer cannot—orally or in writing, directly or indirectly—seek this type of information about an applicant. Accordingly, employers and their agents can no longer ask candidates, or their current or former employers, what candidates have earned in the past. An employer must, upon reasonable request, provide an applicant with the pay scale assigned to the position sought. Salary history may be discussed if an applicant "voluntarily and without prompting" discloses his or her history to a potential employer.⁵

Second, [AB 46](#) extends the coverage of the equal pay statute (Cal. Labor Code § 1197.5) to all employers, both public and private. That being said, the law also stipulates that Labor Code § 1199.5, which imposes penalties and damages, applies only to private employers.

Workplace Safety. Another new law affects manufacturers of certain consumer products (air care, automotive, cleaning, or polish or floor maintenance products) as well as employers that may have these products in their workplaces. Under [SB 258](#), the Cleaning Product Right to Know Act of 2017, employers that are required to maintain and provide safety data sheets must also make available information prepared by manufacturers about the products specified in this act.

Finally, while not summarized in any detail, additional recently-enacted labor and employment related bills are identified below. All in all, employers in the Golden State have numerous compliance challenges to tackle before they ring in the new year.

Bill Number	Topic of Enacted Bill
AB 20	Public employee retirement systems: consideration of divestment from Dakota Access Pipeline
AB 31	Whistleblowers: creation by auditor of an alternate system of reporting
AB 55	Hazardous materials management: training for skilled journeypersons of certain stationary sources

<u>AB 83</u>	Collective bargaining: allowing Judicial Council employees to form, join, and participate in labor organizations
<u>AB 199</u>	Public works: limitations on the exemption applicable to private residential projects (i.e., for payment of prevailing wages, etc.)
<u>AB 226</u>	Teacher credentialing: expedited consideration of applications for spouses/legal partners of active service members
<u>AB 317</u>	Farmworker housing in Napa County: creation of account by Office of Migrant Services to assist with financing, maintenance, and operation of housing
<u>AB 326</u>	State Board of Barbering and Cosmetology: adding physical and sexual abuse awareness to required health and safety course as of July 1, 2019
<u>AB 415</u> <u>AB 563</u> <u>SB 282</u>	Bills relating to the operation of CalFresh (food assistance benefits) and/or CalWORKs
<u>AB 500</u>	Employee codes of conduct: employee interactions with pupils
<u>AB 512</u>	Public employee retirement systems: extension of retirement benefit for certain state safety members through January 1, 2023
<u>AB 579</u>	Firefighter apprenticeship: development of recruiting program
<u>AB 581</u>	Public works apprenticeship: recordkeeping requirements
<u>AB 618</u>	Local Agency Public Construction: school district and community college district job order contracting: project labor agreement requirement

<u>AB 670</u>	Classified employees: elimination of exemption for part-time playground positions
<u>AB 848</u>	Public contracts: prohibiting University of California and California State University from contracting for services unless the contractor (or subcontractor) certifies that all work will be performed with workers in the U.S. or explaining any work performed elsewhere
<u>AB 851</u>	Local agency contracts: clarifications and revisions concerning use of construction manager at-risk construction contracts
<u>AB 1102</u>	Health facilities: increase of maximum fine, up to \$75,000, for misdemeanor violations of the whistleblower protection law
<u>AB 1111</u>	Removing Barriers to Employment Act: establishing initiative to provide individuals with barriers to employment with services to enable them to participate in the workforce
<u>AB 1149</u>	Workforce investment boards: expansion of services to which leveraged funds may be applied
<u>AB 1221</u>	Alcoholic beverage control: creation of Responsible Beverage Service training, to be required of alcohol servers
<u>AB 1222</u>	Vehicles: amendment of the prohibition against driving while operating a handheld wireless device, to remove certain devices from coverage
<u>AB 1223</u>	Construction contract payments: imposing requirement that state agencies making certain payments must post details about the payment on their web sites
<u>AB 1243</u>	Public employees' retirement system: authorizes superintendents to draw requisitions as needed to pay contributions for replacement benefit plans

<u>AB 1325</u>	Teachers retirement systems: eliminates fee for midcareer retirement program, expands confidentiality provisions to include health care benefits, revises provisions concerning reduced workloads, and other provisions
<u>AB 1424</u>	University of California: Best Value Construction Contracting Program: imposes requirement for prequalification or shortlisting of contractors
<u>AB 1455</u>	California Public Records Act: adds a new exemption to disclosure requirements
<u>SB 31</u>	California Religious Freedom Act: prohibits state or local agencies from providing or disclosing to the federal government personal information about an individual's religious beliefs, practices, etc. if sought for the purpose of compiling a database for law enforcement or immigration purposes
<u>SB 179</u>	Gender Recognition Act: revises requirements for individuals to obtain birth certificates, court judgments recognizing change of gender, and driver's licenses, easing restrictions for changes needed to conform to an individual's gender identity
<u>SB 201</u>	Higher Education Employer-Employee Relations Act: redefines "employees" to include student employees "whose employment is contingent upon their status as students"
<u>SB 266</u>	Armed service members: revises provisions governing consumer loans
<u>SB 285</u>	Public employers: union organizing: prohibits a public employer from "deterring or discouraging public employees from becoming or remaining members of an employee organization"
<u>SB 334</u>	Enhanced industrial disability leave: provides extended leave benefit for certain state bargaining unit workers

<u>SB 418</u>	Public contracts: amending the definition of a "skilled and trained workforce" to exclude work performed in specific occupations (i.e., bricklayer, stone mason, teamster, tile layer)
<u>SB 490</u>	Barbering and Cosmetology Act: requiring commissions to be paid to licensed employees at least twice a month on a designated payday, along with other related provisions
<u>SB 728</u>	State public employees: veterans with service-related disabilities: provides additional sick leave credits
<u>SB 731</u>	Public school employees: veterans with service-related disabilities: provides additional leaves of absence
<u>SB 776</u>	Veterans' benefits: designation of Department of Veterans Affairs employee to assist incarcerated veterans in applying for and receiving any federal or other benefits

¹ Rod Fliegel & Allen Lohse, *California Statewide Ban-the-Box Law Signed By Governor*, Littler Insight (Oct. 16, 2017).

² See also [S.B. 54](#) (prohibiting "state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes").

³ On a related note, [AB 699](#) seeks to ensure equal access to public school for students regardless of their immigration status. AB 699 prohibits schools from collecting information concerning the citizenship of students or their family members and encourages schools to adopt certain practices aimed at promoting education among immigrant families.

⁴ Alexis

[California Will Require Small Businesses to Provide 12 Weeks of Unpaid, Protected Leave for Baby Bonding](#)
Sohrakoff, [es](#)
, Littler ASAP (Oct. 13, 2017).

⁵ Bruce Sarchet, *New California Law Prohibits Salary Inquiries*, Littler ASAP (Oct. 13, 2017).

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