



California Countdown: Which Labor & Employment Bills Will the Governor Sign?

BY BRUCE SARCHET, CORINN JACKSON, AND SEBASTIAN CHILCO ON SEPTEMBER 20, 2017

September 15 was the last day in 2017 for bills to pass both houses of the California Legislature and be forwarded to the governor. Governor Jerry Brown (D) has until October 15, 2017 to sign, veto, or otherwise not act upon these bills. Those bills that become law will take effect on January 1, 2018 unless a bill specifies an earlier or a later effective date. Included on the list of bills on the governor's desk are numerous labor and employment items that could impact private employer operations. Below we briefly identify and summarize the more notable measures, and flag other bills employers were watching that did not progress – this round – but which could again be taken up when the legislature reconvenes on January 3, 2018.

Background Checks

AB 1008 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1008) would amend the California Fair Employment and Housing Act to generally “ban the box” for employers with five or more employees by prohibiting questions about an applicant’s conviction history before a conditional offer of employment is made. The bill would also limit consideration of arrests that did not result in convictions, diversion program participation and/or convictions that were sealed, dismissed, expunged, or eradicated, and prescribe steps that must be taken if an employer intends to deny employment solely or partly because of conviction history.

Discrimination

AB 46 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB46) would provide that Labor Code section 1997.5, the most recently enacted and notable sex-based pay discrimination statute, applies to private and public employers. However, the bill stipulates that Labor Code section 1199.5, which imposes penalties and damages, applies only to private employers.

AB 569 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB569) would confirm that the state constitution's right to privacy includes the freedom to make reproductive health decisions free of employer interference; prohibits adverse actions against employees, their dependents or family members for their reproductive health decisions; labels as null and void contracts or agreements made by employees waiving the law's benefits; and requires notice of employee rights and remedies in employee handbooks.

AB 1209 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1209) would, beginning July 1, 2019 and every two years thereafter, require businesses with 500 or more employees in California that must file a statement of information with the Secretary of State to report the difference between the mean and median wages of male and female employees who are exempt administrative, executive, or professional employees, or board members, in California.

AB 1710 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1710) and **SB 266** (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB266) would slightly modify anti-discrimination laws to prohibit employers from negatively impacting an employee's **terms, conditions, or privileges of** employment based on the employee's military membership or service.

Enforcement

SB 306 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB306) would allow the state labor department to investigate employers it suspects discharged or otherwise discriminated against an individual in violation of any law under the department's jurisdiction. 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 immigration-related threats.

SB 491 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB491) would amend the California Fair Employment and Housing Act to not limit a local government's ability to refer a person alleging discrimination to the Department of Fair Employment and Housing for information about filing a complaint, to assist the person filing a complaint, and to provide relevant information and resources. It would also establish an advisory group to study, among other things, the feasibility of authorizing local governments to enforce state anti-discrimination laws, conduct workplace site visits, and mediate disputes.

Government Contractors

SB 418 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB418) would add occupation-specific exceptions to the requirement that a specific percentage of skilled journeypersons working on a public contract or project be graduates of an apprenticeship program.

Immigration

AB 450 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB450) would provide that, unless federal law requires, employers or their agents cannot voluntarily consent to immigration enforcement agents entering nonpublic areas of a workplace without a judicial warrant.

Leaves of Absence

SB 63 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB63) would amend the California Family Rights Act (CFRA) to allow employees who work at worksites that employ at least 20 employees within 75 miles to take 12 weeks of unpaid leave for new child bonding purposes. To be eligible, an employee must have more than 12 months of service and at least 1,250 hours of service with the employer during the previous 12-month period. The bill expands the number of employees entitled to such leave, as currently the CFRA applies only to employees who work at worksites where at least 50 employees work within 75 miles.

Joint Employer Liability

AB 1701 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1701) would provide that, for certain construction contracts entered into on or after January 1, 2018, direct contractors assume and are liable for unpaid wages, benefits, or contributions a subcontractor owes for labor connected to the contract, and would require subcontractors to provide required payroll records upon a direct contractor's request.

Salary History

AB 168 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB168) would limit an employer's ability to ask about or rely on an applicant's salary history when making employment decisions, and requires employers to provide, upon request, a position's pay scale information.

Wage & Hour

SB 490 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB490) would require at least semi-monthly payment of commissions to employees licensed per the Barbering and Cosmetology Act, define the circumstances that constitute commissions, and set the minimum pay rate for rest and recovery periods.

Workplace Safety

AB 978 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB978) would require employers to provide, for free, a written or electronic copy of their written injury prevention program within 10 business days of a request by employees or their representative.

AB 1222 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1222) would remove specialized mobile radio devices and two-way messaging devices from the list of examples of electronic wireless communications devices that may not be used while driving.

SB 258 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB258) would create the Cleaning Product Right to Know Act of 2017 and generally require employers that are required to maintain and ensure the accessibility of safety data sheets to make available information concerning chemicals included in certain products at the workplace.

Workplace Training

SB 295 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB295) would require farm labor contractors to provide mandatory sexual harassment training to agricultural employees in the language the employees understand, which may be accomplished either by providing training in that language or having the training interpreted into that language. Additionally, it would create a new statute that imposes liability on farm labor contractors that: 1) do not comply with training requirements; 2) do not provide employees a record of their training or a copy of the state's sexual harassment pamphlet; 3) falsify employee training completion records; and/or 4) do not keep training records.

SB 396 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB396) would require employers with 50 or more employees to include in their sexual harassment training to supervisory employees, training on harassment based on gender identity, gender expression, and sexual orientation. It would also require employers with five or more employees to display in the workplace a Department of Fair Employment and Housing poster regarding transgender rights.

What Did Not (Yet) Make the Cut

Although unlike youth sports players, legislators are not given consolatory participation ribbons when their legislation is introduced but not enacted, they have more than one season to hoist a trophy because bills not passed by September 15 can again be considered during the next legislative session that begins in January 2018. Below are notable bills that did not make the 2017 legislative playoffs, but are likely to compete in 2018.

- **AB 5** (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB5) (**Scheduling**) would, and among other things, require employers with 10 or more employees to offer additional work hours to nonexempt employees before hiring an additional employee or subcontractor.
- **AB 1099** (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1099) (**Gig Economy Tips**) would require organizations using an online application or platform to connect customers with workers that allow payment by debit or credit card to allow tips via the same, which the worker must receive by the next regular payday following the tip.
- **AB 1565** (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1565) (**White Collar Salary Requirements**) would increase minimum salary requirements for exempt executive, administrative, and/or professional employees.
- **SB 562** (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB562) (**Healthcare Benefits**) would establish a comprehensive universal single-payer health care coverage program for California residents.

We will provide more in-depth analysis concerning enacted measures as developments occur.

© 2017 Littler Mendelson P.C.