2017 Labor & Employment Law Update for California Employers

December 28, 2016

This client alert provides a brief overview of changes to California laws and regulations that will impact employers across the state through their personnel policies and how they manage their workforces in 2017.

While the changes are not as expansive as those in recent years, employers should carefully review their policies and practices to ensure compliance and to limit potential exposure. Here is a summary of the changes to California laws with their effective date noted in parentheses.

SB 3: Minimum Wage (Effective January 1, 2017)
SB 3 will increase the minimum wage over the next several years to $15 an hour. For January 1, 2017, businesses with 26 or more employees must pay a minimum wage of $10.50 an hour. Small businesses with 25 or fewer employees are not required to begin the scheduled increase until 2018. The minimum wage increase will require all employers to post a new Minimum Wage Order (MW-2017). Notably, many California cities, including Los Angeles, have more expansive minimum wage ordinances that must be followed for businesses operating within those cities.

Proposition 64: Legalization of Marijuana Under State Law Affects the Workplace (Effective November 9, 2016)
California voters passed Proposition 64, known as the Adult Use of Marijuana Act, which permits the recreational use of marijuana for adults 21 years old and over. State law now allows adults to smoke or ingest marijuana in a private home, to possess small amounts of nonmedical marijuana, and to grow small amounts at home for personal use.

Marijuana, however, remains illegal under federal law, including for medical use. Proposition 64 also makes clear that employers remain free to test employees for marijuana use before hiring them, or at any point during their employment if there is a reasonable suspicion of impairment. If employees test positive, Proposition 64 allows businesses to terminate their employment even if there is no indication they were actually impaired on the job. These employer-friendly provisions codify case law that emerged after the legalization of medical marijuana.
SB 1167: Indoor Heat Illness Regulations Coming to California Soon (Effective January 1, 2019)

This bill, which will be codified as California Labor Code Section 6720, requires the Division of Occupational Safety and Health (the “Division”) to propose heat illness and injury prevention regulations regarding employees who work indoors. By January 1, 2019, the Division must propose these regulations to the Occupational Safety and Health Standards Board for review and adoption. The law permits the Division to limit certain high-heat provisions to certain industries.

ABX2-7: Smoking in the Workplace (Effective June 9, 2016)

By way of background, California law already prohibited smoking of tobacco products inside an enclosure at a place of employment for certain employers. This bill amends Labor Code Section 6404.5 and expands the prohibition on smoking of tobacco products in all enclosed places of employment to all employers of any size, including a place of employment where the owner-operator is the only employee (i.e., owner-operated businesses). “Enclosed space’ includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building.” There are, however, certain exemptions. “Place of employment” does not include: (1) 20% of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment; (2) Retail or wholesale tobacco shops and private smokers’ lounges; (3) cabs of motor trucks; (4) theatrical production sites, if smoking is an integral part of the story in the theatrical production; (5) medical research or treatment sites, if smoking is integral to the research and treatment being conducted; (6) private residences, except for licensed family day care homes; (7) patient smoking areas in long-term health care facilities.

AB 908: Paid Family Leave (Effective January 1, 2018)

Paid Family Leave (“PFL”) provides short-term benefits to eligible employees who lose wages when they need to take time off work to care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner, or to bond with a new child entering the family by birth, adoption, or foster care placement.

This bill revises the formula for determining benefits available to those eligible employees “for periods of disability commencing after January 1, 2018, but before January 1, 2022.” This bill provides “a weekly benefit amount minimum of $50 and increases the wage replacement rate to specified percentages, but not to exceed the maximum workers’ compensation temporary disability indemnity weekly benefit amount established by the Department of Industrial Relations pursuant to existing law.” The bill is designed to make the benefits more meaningful for lower-wage workers. Further, this bill removes the existing seven-day waiting period for paid family leave benefits.

AB 1676 & SB 1063: Fair Pay Act Expands to Race and Ethnicity (Effective January 1, 2017)

Under the Fair Pay Act, which went into effect on January 1, 2016, existing law generally prohibits an employer from paying an employee at wage rates lower than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. The Fair Pay Act provides for exceptions if the wage differential is based upon one or more of the following factors: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; (4) a bona fide factor other than sex, such as education, training, or experience.

AB 1676 amends the Fair Pay Act (Labor Code Section 1197.5) to provide an employee’s prior salary cannot, by itself, justify any disparity in compensation under the bona fide factors listed above.
SB 1063 amends Labor Code Sections 1197.5 and 1199.5 and expands the requirements of the Fair Pay Act to include an employee’s race or ethnicity, and not just gender.

**AB 1732: Single Use Restroom (Effective March 1, 2017)**

Commencing on March 1, 2017, this bill requires all single-user toilet facilities (defined as no more than one water closet and one urinal with a locking mechanism) in any business establishment, place of public accommodation, or government agency to be identified as all-gender toilet facilities. This bill would authorize inspectors, building officials, or other local officials responsible for code enforcement to inspect for compliance with these provisions during any inspection.

**AB 1843: Criminal History/Ban the Box (Effective January 1, 2017)**

California Labor Code Section 432.7 prohibits most employers from asking an applicant to disclose any arrest or detention that did not result in a conviction, or from using such information as a factor in connection with employment. This bill expands this prohibition to include any information concerning or relating to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. Notably, Los Angeles and San Francisco, along with other jurisdictions, have adopted “ban the box” legislation placing significant restrictions on when and how an employer may inquire into applicants’ criminal background records.

**AB 2337: Employment Protections for Victims of Domestic Violence, Sexual Assault, or Stalking (Effective July 1, 2017)**

This bill requires that by July 1, 2017, employers with 25 or more employees provide specific information in writing to new employees upon hire and to other employees upon request of their rights to take leave under Labor Code Section 230.1 (relating to victims of domestic violence, sexual assault, or stalking). This bill also requires that, on or before July 1, 2017, the Labor Commissioner develop a form that employers may elect to use to comply with these provisions and to post it on the Labor Commissioner’s website. Employers are not required to comply with the notice of rights requirement until the Labor Commissioner posts such form.

**AB 2535: Itemized Wage Statements (Effective January 1, 2017)**

This bill amends Labor Code Section 226 and clarifies that employees who are exempt from the payment of minimum wage and overtime are not required to have their hours tracked and logged on an itemized wage statement, i.e. pay stub.

**AB 2899: Minimum Wage Violations (Effective January 1, 2017)**

This bill expands the requirement that employers post a bond upon appeal of wage violations under California Labor Code Section 1971.1. Existing law requires employers to file a wage bond only for appeals in cases where an employee files a wage claim with the Labor Commissioner for unpaid wages. AB 2899 applies the bond requirement to appeals for cases initiated by the Labor Commissioner for violations of wage laws. It also requires employers post a bond with the Labor Commissioner prior to filing an appeal of a decision by the Labor Commissioner relating to violation of minimum wage laws. The bond must cover the total amount of minimum wages, liquidated damages, and overtime compensation owed to employees. The total amount of the bond is forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.

Under existing law, an employer is prohibited from engaging in, or directing another person to engage in, an unfair immigration-related practice against a person for the purpose of, or intent, to retaliate against any person for exercising a protected right. Unfair immigration-related practices are defined as requesting more or different documents than required under federal law, or refusing to honor documents tendered that on their face reasonably appear to be genuine.

SB 1001 amends the existing law to make it unlawful for an employer to: (1) request more or different documents than required under Section 1324a(b) of Title 8 of the United States Code to verify an individual is not an unauthorized immigrant; (2) refuse to honor documents tendered that on their face reasonably appear to be genuine; (3) refuse to honor documents or work authorizations based on specific status or term that accompanies the authorization to work; or (4) attempt to reinvestigate or reverify an incumbent employee’s authorization to work using an unfair immigration-related practice. An employee who suffers an unfair immigration-related practice can file a complaint with the Division of Labor Standards Enforcement. The bill also provides that a violation of these provisions can result in a penalty of up to $10,000.

SB 1241: Choice of Law and Forum in Employment Contracts (Effective January 1, 2017)

This bill adds Labor Code Section 925 and prohibits employers from requiring California-based employees to enter into agreements (including arbitration agreements) requiring them to: (1) adjudicate claims arising in California in a non-California forum; or (2) litigate their claims under the law of another jurisdiction, unless the employee was represented by counsel. Any provision of a contract that violates this new law is voidable by the employee; any dispute arising thereunder shall be adjudicated in California under California law; and the employee is entitled to recover reasonable attorneys’ fees.

Additional Information

For further guidance regarding how these changes may impact your workplace, or for assistance in formulating or implementing a plan for handling these changes, please contact your Kutak Rock LLP attorney or the member of our employment practice listed below. For more information concerning our employment law practice and for recent employment law news and alerts, please visit us at www.KutakRock.com.

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