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Special Report

New California Employment Laws Effective in 2017

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California Employer Challenges in 2017

The purpose of this report is to provide a summary of some of the major laws that may impact your operations and to help you plan and prepare for these new compliance challenges. It is part of our broader commitment to helping clients meet their compliance obligations. The laws covered in this report are effective January 1, 2017 unless otherwise noted.

As always, please contact your Human Resources Business Partner if you have any questions.

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SB 3 - Minimum Wage Increase and Expansion of Sick Leave

SB 3 raises the state minimum wage to $15.00 per hour by 2022. The new law also amends the existing paid sick leave law to provide paid sick leave to in-home supportive services employees beginning July 1, 2018. The sick leave entitlement will provide up to one day of leave per year and increase over time to three days per year.

The new law annually increases the state minimum wage starting January 2017. California's minimum wage currently is $10.00 per hour. Under the new law, the minimum wage for employers with 26 or more employees will increase as follows:

- $10.50 per hour as of January 1, 2017
- $11.00 per hour as of January 1, 2018
- $12.00 per hour as of January 1, 2019
- $13.00 per hour as of January 1, 2020
- $14.00 per hour as of January 1, 2021
- $15.00 per hour as of January 1, 2022

The increase to $15.00 per hour is more gradual for employers with 25 or fewer employees; minimum wage increases for the smaller employers will begin a year later, starting January 1, 2018. The law permits the Governor to temporarily suspend the minimum wage increase no more than two times based on the health of California's general economy or state budget. Once the minimum wage reaches $15.00 per hour, the minimum wage rate will be adjusted annually.

Keep in mind that the increase in minimum wage also affects other wage and hour requirements that are based on the minimum wage.

- To be exempt from state overtime laws, the salaries of executive, administrative, and professional employees, and private school teachers, must be no less than two times the state minimum wage for full-time employment (*i.e.*, 40 hours per week). As a reminder, an employee's exempt status also depends on the job duties performed by the employee.

- Certain commissioned salespersons' earnings must exceed one-and-a-half-times the state minimum wage to be exempt from state overtime laws.

- Employees paid on a piece-rate basis (piece rates might need to be adjusted to fully compensate for the new minimum wage).

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- Certain employees can be required to provide and maintain hand tools and equipment customarily required by the trade or craft if their wages are at least two times the minimum wage.

- Collective bargaining agreement-based exceptions for numerous California laws require that employees' regular hourly rate of pay not be less than 30% more than the state minimum wage.

Increase in Minimum Hourly Rate for Computer Employees, Physicians and Surgeons

The Department of Industrial Relations has adjusted the computer software employee's minimum hourly rate of pay exemption from $41.85 to $42.35, the minimum monthly salary exemption from $7,265.43 to $7,352.62, and the minimum annual salary exemption from $87,185.14 to $88,231.36 Finally, the department has adjusted the licensed physicians and surgeons employee's minimum hourly rate of pay exemption from $76.24 to $77.15.

AB 1676 and SB 1063 - Equal Pay

California's Fair Pay Act prohibits employers from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work. The Act requires employers to prove that differences in wages are entirely and reasonably based on a seniority system, merit system, a system that measures earnings by quantity or quality of production, education, training, experience, or a bona fide factor other than sex.

AB 1676 prohibits using prior salary alone to justify any disparity in compensation under the bona fide factor exception. SB 1063 expands the protections of the Fair Pay Act to race and ethnicity and prohibits employers from paying any of its employees wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work. This essentially means that salary negotiations must be based on objective criteria, like education and experience; not on prior salary alone.

AB 1843 – Use of Juvenile Criminal History

In the past, a California employer could freely inquire about and consider a job applicant's history of criminal convictions in determining any condition of employment including hiring, promotion, or termination. Although California law prohibited employers from asking about or considering arrests or detentions that did not result in convictions, the law did not impose any restrictions regarding what types of convictions employers could ask about or consider.

AB 1843 restricts an employer from asking questions about an applicant's "arrest, detention, processing,

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diversion, supervision, adjudication, or court disposition" that may have occurred while the applicant was subject to the process and jurisdiction of a juvenile court. Employers are prohibited from using this information in making employment decisions.

Certain employers are exempt including employers in health facilities. Such employers may inquire about incidents that occurred when the applicant or employee was subject to the process and jurisdiction of a juvenile court where an applicant was convicted of a felony or misdemeanor under any law enumerated in Penal Code section 290 (Sex Offender Registration) or Health & Safety Code section 11590 (Registration of Controlled Substance Offenders) during the previous five years.

Employers should immediately review their employment applications and other employment-related documents to determine whether they should be revised. Our current model employment application does not contain any criminal history questions.

AB 2337 – Notice and Posting of Leave Rights

AB 2337 expands the employer notice requirements regarding domestic violence employee protections provided by Labor Code section 230.1. This new bill requires employers of 25 or more to provide written notice to employees of their rights to take protected leave for domestic violence, sexual assault or stalking. Employers must inform each employee of his or her rights upon hire and at any time upon request. The Labor Commissioner must develop and post online a form that employers may use to satisfy these new notice requirements by July 1, 2017. An employer's obligation to comply with these new disclosure requirements will become effective when the Labor Commissioner posts the new form. We will alert clients when this occurs.

AB 1847 – Earned Income Tax Credit Notification

Under federal law employers must notify all employees that they may be eligible for the federal earned income tax credit. The new law requires covered employers to notify covered employees that that they may also be eligible for the California Earned Income Tax Credit.

Coverage

The law defines a covered employer as a California employer who is subject to, and is required to provide, unemployment insurance to his or her employees, under the California Unemployment Insurance Code. A covered employee is any person who is covered by unemployment insurance by his or her employer pursuant to the Unemployment Insurance Code.

Notification Requirement

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Employers must notify employees within one week before or after, or at the same time, the employer provides to the employee an annual wage summary, including but not limited to a Form W-2 or a Form 1099. The new law sets forth the required language for the notification in the form of a model notice. The employer must provide the required notification by providing a physical copy to the employee or mailing it to the employee's last known address. The notification must include:

- instructions on how to obtain any notices available from the Internal Revenue Service and the Franchise Tax Board including, but not limited to, the IRS Notice 797 and information on the California EITC's website; or

- any notice created by the employer, as long as it contains substantially the same language as the notice described in the above paragraph or in the sample language provided by the amendment.

The new law provides that an employer cannot satisfy the notification requirements by posting a notice on an employee bulletin board or sending it through office mail.

ADP TotalSource and ADP Resource will send this notice to the employee's mailing address that we have on record. You should therefore ensure that this record is accurate.

AB 1732 –Gender-Neutral Restroom Law

AB 1732, requires single-user restrooms in California business establishments, government buildings, and places of public accommodation, to be universally accessible to all genders, and identified by signage as all gender. A "single-user" restroom is defined by statute as a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. The new law, which takes effect on March 1, 2017, authorizes public inspectors or building officials to check for compliance during any inspection.

Note that earlier this year, the California Department of Fair Employment and Housing issued guidelines for protecting transgender rights in the workplace. Similarly, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), has taken the position that all employees, including transgender employees, should have access to restrooms consistent with their gender identity.

AB 1978 - Janitorial Industry

AB 1978 provides protections to all janitors, whether they are employees, independent contractors, or

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franchisees ("covered workers"). The law covers employers (1) of at least one employee and one or more covered workers, and (2) that enter into contracts, subcontracts, or franchise agreements to provide janitorial services.

The new law provides that covered employers must keep for three years accurate records of the following information:

- names and addresses of all employees;
- hours each employee worked daily, including the start and end times;
- wages and wage rates paid each payroll period;
- age of every minor employee; and
- any other conditions of employment.

The law also requires the DLSE to maintain a database of property service employers and to develop a biennial sexual harassment and violence prevention training. This bill prohibits an employer from registering or renewing its registration if it has not fully satisfied any final judgment for unpaid wages or made appropriate tax contributions. “Successor employers” are also liable for any wages and penalties owed to the predecessor’s employees.

AB7 – Smoking in the Workplace

California employers are required to maintain a safe and healthful work environment. Consistent with this public policy, California enacted a statewide smoking ban in all enclosed workplaces. The law included a number of exemptions that excluded many places of employment from its protection.

The stated intent of AB7 is to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in the state.” To that end, the state’s smoking ban has been extended to owner-operated business. The law now provides that “[a]n employer or owner-operator of an owner-operated business shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products at a place of employment or in an enclosed space.” An owner-operated business is one in which the business has no employees, independent contractors, or volunteers and the owner is the only worker.

Any such owner, who allows a nonemployee access to his business on a regular basis, will not be found to have knowingly or intentionally violated the law if he or she posts clear and prominent signs at each entrance advising of the prohibition throughout the building or advising of the prohibition and identifying the designated smoking areas. An owner who is also found to have requested that a nonemployee refrain from smoking in an enclosed area will not be liable. Violators are subject to fines not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third violation and for each subsequent

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violation within one year.

The amendment also identifies seven places that are not considered “places of employment” for purposes of the law. They are: (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 or truck tractors if nonsmoking employees are not present; (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 private residences licensed as family day care homes; and (7) patient smoking areas in long-term health care facilities. While not subject to regulation under this law, these places remain subject to regulation via local smoking ordinances.

SB 1001 - Unfair Immigration-Related Practice

Federal law requires employers to verify that all new hires are eligible to work in the United States. To this end, each new hire must document his or her identity and authorization to work in the U.S. by completing the federal Form I-9 and presenting at least one form of identification. SB 1001 prohibits employers from doing any of the following:

1. Request more or different documents than are required under Federal law.
2. Refuse to honor documents tendered that on their face reasonably appear to be genuine.
3. Refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work.
4. Attempt to reinvestigate or re-verify an incumbent employee’s authorization to work using an unfair immigration-related practice.

For any violations, workers may file a complaint with the Department of Labor Standards Enforcement and can recover penalties up to $10,000.

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