

California Employers: What You Need to Know for 2014

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All employers with operations in California should be aware of the following new legislation, which, unless otherwise noted, goes into effect in California on January 1, 2014:

Wage and Hour Laws and Penalties

Minimum wage increase. AB 10 raises the state-wide minimum wage from the current \$8 per hour to \$9 per hour, effective July 1, 2014, and then to \$10 per hour, effective January 1, 2016. Employers should note that employees currently classified as exempt must still meet the salary basis test to qualify for the particular exemption claimed.

Minimum wage penalties. Under Labor Code section 1194.2, employees who have not been paid minimum wages may recover liquidated damages through civil actions or administrative wage hearings before the Labor Commissioner. AB 442 extends the authority of the Labor Commissioner to award liquidated damages to affected employees through the labor commissioner citations process. Thus, affected employees will be able to recover liquidated damages in an amount equal to the wages unlawfully unpaid plus interest thereon through either a civil action, an administrative hearing, or a citation issued by the Labor Commissioner.

Wage claim attorneys' fees. Labor Code section 218.5 awards attorneys' fees and costs to the prevailing party in any action for nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, regardless of whether the prevailing party is the employer or employee. Under SB 462, a prevailing employer may only recover attorneys' fees and costs if the court determines that the employee filed suit in bad faith.

Domestic worker overtime. AB 241 enacts the Domestic Worker Bill of Rights, which provides that a "domestic work employee who is a personal attendant" will be eligible for overtime at 1.5 times his or her regular rate of pay if he or she works more than nine hours in any workday or more than 45 hours in the workweek. Individuals and entities employing in-home help should determine whether they or their employees qualify for an exemption.

Heat illness recovery periods. Under Cal/OSHA regulations, employees that work outdoors in

temperatures exceeding 85 degrees Fahrenheit must be allowed, and encouraged, to take a cool-down rest for at least five minutes when they feel the need to do so in order to avoid overheating. SB 435 now adds this “heat illness recovery period” to the requirement in Labor Code section 226.7 that employers provide employees with meal and rest breaks. Thus, an employer’s failure to provide a heat illness recovery period to non-exempt employees will now result in penalties under Labor Code section 226.7 amounting to one additional hour of pay at the employee’s regular rate of compensation for each workday that the recovery period is not provided.

Criminal withholding. Labor Code section 218.5 makes it a crime for an employer to willfully fail to remit agreed-upon payments to health and welfare funds, pension funds, or other various benefit plans, with failure to remit more than \$500 constituting a felony. SB 390 amends section 218.5 to include an employer’s failure to remit withholdings from an employee’s wages made for state, local, or federal tax purposes.

Prevailing wages. Employers who provide services or construction work for any public entities must pay current prevailing wages, which are usually significantly higher than the minimum wage. Prevailing wage laws have been updated for 2014 in the following ways:

1. AB 1336 and SB 377 amend the process and timeline for assessing prevailing wage violations. Under these provisions, a notice of completion of a public work filed with a county recorder must also be given to the Labor Commissioner, and the awarding body or political subdivision which accepts a public work must also provide notice of that acceptance to the Labor Commissioner. The new laws then extend the deadline for the Labor Commissioner to serve a civil wage and penalty assessment alleging a violation of the prevailing wage law from 180 days (roughly six months) to eighteen months after the filing of a valid notice of completion with the applicable county recorder, or after acceptance of the public work, whichever occurs last. Moreover, if notice is not given in a timely manner to the Labor Commissioner, the deadline to serve an assessment shall be tolled for the length of the delay.
2. AB 1336 also amends prevailing wage law to allow a court to award liquidated damages and civil penalties, whereas such relief was previously recoverable only in an administrative action brought by the Labor Commissioner.
3. Existing law requires affected contractors to keep detailed payroll records relating to public works and produce these as necessary, with names and social security numbers redacted, to a joint labor-management committee. AB 1336 amends this rule to require redaction of social security numbers only.
4. SB 377 also establishes specific deadlines for the Director of the Department of Industrial Relations to respond to a request for a determination of whether a specific project or type of work is a public work within the meaning of the prevailing wage law.
5. SB 7 prohibits a charter city from receiving or using state funding or financial assistance for a construction project if the city has awarded, within the prior 2 years, a public works contract without requiring the contractor to comply with prevailing wage provisions. Small project exemptions apply. SB 7 was enacted on the heels of a decision by the California Supreme Court holding that, under the California Constitution, the wage levels of workers employed by charter cities on locally funded public works projects are a municipal affair not subject to state regulation. Thus, the constitutionality of this new law may be the subject of future litigation.

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6. SB 54 extends prevailing wage requirements to privately financed refinery construction projects.
 7. SB 776 prohibits contractors from counting payments for monitoring and enforcing prevailing wage laws towards their obligation to pay prevailing wages.

Discrimination and Retaliation

Retaliation. AB 263 expands employer liability for violating Labor Code 98.6, which currently protects employees from discharge or discrimination when they have asserted their rights under the Labor Code. As amended, the law will:

1. Prohibit any *retaliation* or *adverse action* against employees who have asserted any right under the Labor Code or who have updated or attempted to update their “personal information” in a manner unrelated to their skill set, qualifications, or knowledge required for the job;
2. Expand protected activity to include a written or oral complaint by an employee that they are owed unpaid wages; and
3. Provide a civil penalty to employers of up to \$10,000 per employee per instance of retaliation.

New protected class. AB 556 adds “military or veteran status” to the list of classes protected from employment discrimination under the Fair Employment and Housing Act.

Sexual harassment. SB 292 clarifies that sexually harassing conduct is unlawful under FEHA regardless of whether the conduct is motivated by any sexual desire.

Whistleblower protections. Labor Code 1102.5 prohibits employers from retaliating against employees who report violations of a state or federal rule or regulation to a government agency, except for employees with duties related to company compliance. SB 496 extends whistleblower protections to employees with compliance duties and expands protected activity to include:

1. Reports alleging a violation of a *local* rule or regulation; and
2. Internal complaints to “a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or non-compliance.”

The new law also clarifies that retaliation is prohibited when the employer “believes the employee disclosed or may disclose information.”

Immigrant Protections

Retaliation. AB 263 prohibits an employer from using immigration law to retaliate against employees who assert protected rights under the Labor Code. Employers who do so, *e.g.*, by contacting or threatening to contact immigration authorities about the immigration status of a current, former, or prospective employee or their family members, will face various penalties, including suspension of

certain business licenses, and may face civil action from affected employees.

Extortion. Similarly, AB 524 clarifies that any person that threatens to report the known or suspected immigration status of an individual may be guilty of criminal extortion.

Despite both laws however, employers may still require employees to verify eligibility for employment under Form I-9 without becoming subject to any penalties.

Leaves, Accommodations, and Benefits

Leave for serious crime victims. Under SB 288, an employee who has been a victim of certain serious crimes may not be discriminated or retaliated against for taking time off from work to appear in any legal proceeding in which his or her right as a victim is at issue. The law defines “victim” to include any person who “suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act,” as well as that person’s spouse, parent, child, sibling, or guardian. Employees must, however, comply with specific requirements for requesting the leave.

Leave for stalking victims. SB 400 extends existing leave protections for victims of domestic violence or sexual assault to victims of stalking. All employers must provide time off to these victims to appear at legal proceedings, and employers with 25 or more employees must also provide time off to deal with medical/psychological treatment, including safety planning.

Leave for volunteer firefighters, peace officers, and rescue personnel. Existing law requires an employer with 50 or more employees to permit an employee who is a volunteer firefighter to take temporary leaves of absence, not to exceed an aggregate of 14 days per calendar year, for the purpose of engaging in firefighting or law enforcement training. AB 11 extends these leave provisions to reserve peace officers or emergency rescue personnel pursuing firefighting, law enforcement, or emergency rescue training.

Wage replacement. Effective July 1, 2014, SB 770 extends paid family leave benefits to employees taking time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law. The law previously only covered time spent caring for a seriously ill child, spouse, domestic partner, or parent or to bond with a child within one year of birth, adoption, or foster care placement. Note, however, that the law does not create the right to a leave of absence, but only to compensation/wage replacement during a qualifying absence.

“Family friendly” work arrangements in San Francisco. According to the Family-Friendly Workplace Ordinance, employers with twenty or more full and part-time employees working within the geographic boundaries of San Francisco must *consider* employee requests for “flexible or predictable working arrangements to assist with care giving responsibilities,” provided that the employee has worked more than six months for the employer, works at least eight hours per week on a regular basis, and complies with guidelines set by the San Francisco Office of Labor Standards Enforcement in making the request. The ordinance also requires applicable employers to post a notice on the premises informing employees of their rights, and protects employees from retaliation for making a request or from adverse action based on “caregiver” status.

Small business health insurance. Small business owners with one to fifty eligible employees may now enroll for health care coverage online at the Small Business Health Options (“SHOP”) segment of the Covered California website. In fact, beginning on January 1, purchasing insurance through

SHOP will be the only way for small business owners to access federal tax credits helping to offset contributions toward employee premiums. Small businesses will be eligible for such tax credits if they have fewer than twenty-five full-time-equivalent employees for the tax year, pay employees an average of less than \$50,000 per year and contribute at least fifty percent of their employees' premium cost. Maximum tax credits will go to employers with ten or fewer full-time-equivalent employees with wages averaging \$25,000 or less per year.

Miscellaneous

Criminal conviction history. Existing law prohibits all employers from asking job applicants to disclose, orally or in writing, any information related to an arrest or detention that did not result in a conviction. Effective July 1, 2014, AB 218 will further prohibit any *state or local agency* from asking an applicant to disclose information regarding a criminal conviction until after determining that the applicant meets minimum employment qualifications. Positions for which a criminal background check is otherwise required by law are exempt.

Business mileage deduction. The IRS has issued new optional standard mileage rates which may be used to calculate the deductible costs of operating an automobile for business, charitable, medical, or moving purposes. The standard mileage rates for 2014 for business driving is \$.56 per mile. Of course, taxpayers still have the alternative option of calculating the actual costs of using a business vehicle.

Labor Commissioner liens on real property. Under current law, the Labor Commissioner is authorized to issue orders, decisions, or awards in connection with employee complaints governed by the Labor Code. AB 1386 provides that the amount due under a final Labor Commissioner order, decision, or award shall create a lien upon the employer's real property, recordable by the Labor Commissioner.

Garment manufacturer registrations. AB 1384 creates a civil penalty for a garment manufacturer's failure to display its name, address, and registration number at the front entrance of the premises. The penalty for an initial citation is \$100 per calendar day of non-compliance, and the fine increases to \$200 per calendar day for subsequent violations.

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