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NEW EMPLOYMENT LAWS IN 2016

If you have any further questions regarding employment related issues, please do not hesitate to contact Sierra J. Spitzer, Esq. at (619) 236-8821 or by email at sierra@sscmlegal.com.

I. DISCRIMINATION, ANTI-RETALIATION, DISCHARGE

SB 358 - Fair Pay Act (Effective January 1, 2016)

NEW LAW: SB 358 revised California's equal pay law to make it the most aggressive in the country.

- "Equal work" vs. "substantially similar work" (employee can now compare his or her wages to a co-worker who does similar work but has a different job title)
- "Same establishment" vs. "similar working conditions" (different dept, geographic location, etc.)
- Employer's burden to explain pay differential
 - o Must explain how each bonafide factor (seniority, merit, etc.) has been applied; must demonstrate the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the business in question, and is consistent with a business necessity.
- Prohibits employers from preventing employees from disclosing their own wages, or disclosing or asking about the wages of others
 - o significant penalties for discrimination, termination and retaliation based on employees exercising their rights to wage transparency
- Requires employers to maintain past records of employee wages and job classifications for three years (rather than two).

AB 1509 - Protections for Family Members When an Employee Engages in a Protected Activity (Effective January 1, 2016)

NEW LAW: AB 1509 prohibits employers from retaliating against family members of employees or applicants who complain of discrimination or unsafe working conditions or engage in whistleblowing. (For example, if a married couple is working for the same employer, and the husband complains of discrimination, that's not a legal basis to take action against the wife.)

AB 987 - Discrimination and Retaliation Related to Disability or Religious-Belief Accommodations (Effective January 1, 2016)

NEW LAW: AB 987 prohibits employers from retaliating or otherwise discriminating against an employee for requesting an accommodation for a disability or religious belief or observance, regardless of whether the accommodation request was granted.

AB 622 - E-Verify System (Effective January 1, 2016)

NEW LAW: AB 622 establishes that it is not acceptable for employers to use the E-Verify system to check employment authorization status of existing employees. Nor can employers use E-Verify for applicants who have not received an offer of employment, except as required by federal law or as a condition of receiving federal funds.

The new law also requires that the employee be notified of any nonconfirmation issued by the Social Security Administration or the United States Department of Homeland Security as soon as practicable.

An employer who violates this section is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of this section. Each unlawful use of the E-Verify system on an employee or applicant constitutes a separate violation.

II. WAGE AND HOUR

Increase In Minimum Wage

Effective January 1, 2016, minimum wage in California is increasing to \$10 per hour.

This is important not only to companies that employ lower-wage workers, but also because it affects the standard for exempt status. For example, in order to be exempt from being paid overtime under the executive, administrative and professional exemptions, the employee must be paid at least twice the minimum wage per month. This means that in 2016 the minimum annual salary to be considered an exempt employee in California will rise to \$41,600.

AB 1506 - Remediating PAGA Violations (Effective October 2, 2015)

NEW LAW: AB 1506 allows employers to cure a PAGA (Private Attorney General Act - gives a private citizen the right to pursue fines that would normally only be available to the State of California) violation by failing to include the inclusive dates of the pay period and the name and address of the legal entity that is the employer on the itemized wage statement. An employer has 33 calendar days from the postmark date of the notice it receives to cure the alleged violation by providing employees with appropriately itemized wage statements and showing such to the Labor and Workforce Development Agency. An employer only has the right to cure alleged violations once in a 12-month period.

AB 1513 - Piece-Rate Compensation (Effective January 1, 2016)

NEW LAW: AB 1513 requires employers to separately compensate piece-rate employees (such as workers paid by the volume or number of services they perform) for rest and recovery periods and “nonproductive” time.

- When a piece-rate employee is on a rest and recovery period before re-starting work, the employee must be paid the applicable minimum wage or his or her average hourly rate (not including overtime), whichever is higher.
- For any nonproductive time - time when the employee is under the employer’s control but not directly related to the activity being compensated - the employee must be paid the applicable minimum wage.
- The new law requires that additional information be added to wage statements, including (a) the total hours of compensable rest and recovery and “nonproductive” periods, (b) the rate of compensation for those periods, and (c) the gross wages paid for those periods during the pay period.
- There is a limited safe harbor for any cause of action based solely on the employer’s failure to pay for rest and recovery periods and other nonproductive time for periods prior to January 1, 2016. If an employer seeks to assert this affirmative defense, then it must satisfy a specific set of requirements by December 15, 2016, that includes paying all previously undercompensated employees with all compensation due and accrued interest.

AB 970 - Enforcement of Employee Claims by Labor Commissioner (Effective January 1, 2016)

NEW LAW: AB 970 provides the California Labor Commissioner with authority to enforce local ordinances and rules regarding overtime hours or minimum wage provisions, and to issue citations and penalties for violations. AB 970 also empowers the Labor Commissioner to issue citations against an employer for violating an employee’s right to indemnification and reimbursements for business expenses or losses according to Labor Code Section 2802.

SB 588 - Judgment Enforcement by Labor Commissioner (Effective January 1, 2016)

NEW LAW: SB 588 provides the California Labor Commissioner with additional means to enforce judgments against employers arising from nonpayment of wages, such as filing a lien on real estate, placing a levy on an employer’s property, or imposing a stop order on an employer’s business in order to assist an employee in collecting unpaid wages.

If a final judgment against an employer remains unsatisfied after a period of 30 days after the time to appeal the judgment has expired, the employer cannot continue to conduct business unless the employer has obtained a bond of up to \$150,000 and a copy of the bond with the Labor Commissioner. The bond shall be effective and maintained until satisfaction of all judgments for nonpayment of wages.

III. LEAVE LAWS

SB 579 - Employees' Time Off To Organize Child Care (Effective January 1, 2016)

NEW LAW: SB 579 expands an employee's right to take time off work to enroll her/his child in school or with a licensed child care provider, or to address a child care provider or school emergency. This law only applies to employers with 25 or more employees, and it also protects employees from discrimination, discharge, or retaliation for taking the time off.

IV. MISCELLANEOUS

SB 501 - Maximum Wage Garnishments (Effective July 1, 2016)

NEW LAW: Under SB 501, the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order must not exceed the lesser of (1) 25% of the individual's disposable earnings for that week, or (2) 50% of the amount by which the individual's disposable earnings for that week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable.

SB 854 - Mandatory Registration for Public Works Projects/Electronic Certified Payroll

NEW LAW: Per the Department of Industrial Relations ("DIR"), contractors and subcontractors on all public works projects awarded on or after April 1, 2015, must use the DIR's electronic certified payroll reporting (eCPR) to furnish certified payroll records to the Labor Commissioner. Contractors are required to register before bidding on and entering into contracts for state and local public works projects and awarding agencies will be required to give notice on form PWC-100 of all public works projects in the state.

To register, contractors must pay an initial registration fee of \$300, which will need to be renewed annually, and complete an online application showing that they:

- Have workers compensation insurance sufficient to cover any employees, as applicable;
- Have a valid contractor's license from the California Contractors State License Board, as applicable;
- Are not subject to any delinquent wage or penalty assessments owed to an employee or the state;
- Are not currently debarred from performing work on a public works project under state or federal law; and
- Have not bid on a public works contract, been listed in a bid proposal, or performed work on a public works project without first being registered through the program, within the preceding 12 months or since the effective date of the program requirements, whichever is earlier.

For State and Local Awarding Agencies

Under the new program, DIR will no longer charge awarding bodies for prevailing wage compliance monitoring and enforcement through the CMU. In addition:

- Requirements to use CMU or specified alternatives for state bond-funded and other specified projects have been eliminated;
- Awarding agencies are now required to register and electronically submit form PWC-100 for **all** public works projects; and
- Awarding agencies will need to include information on the contractor registration requirements in their solicitation of bids.

Important Reminders from 2015

Joint Liability with Labor Contractors

As of January 1, 2015, Labor Code section 2810.3 requires “client employers” to share liability with “labor contractors” (e.g., payroll, temporary staffing, or employee leasing agencies) for payment of wages of non-exempt workers, and for providing them with workers’ compensation insurance.

In brief, if a labor contractor fails to pay its workers properly or fails to provide workers’ compensation coverage for those employees, the “client employer” can now be held legally responsible and liable.

Paid Sick Leave

As of July 1, 2015, AB 1522, the Healthy Workplaces, Healthy Families Act of 2014, requires employers to provide paid sick leave to any employee who has worked at least 30 days—whether on a part time or full time basis, and even if working in a temporary position.

Annually, each California employee must receive at least three days of paid sick leave, and the law provides employers two options for deciding how sick leave accrues:

OPTION ONE: employees earn at least one hour of paid leave for every 30 hours worked. If you implement such a policy, you can cap employees’ maximum accrual of sick leave at 48 hours or 6 days and can limit use to 24 hours/3 days of the paid sick leave time in any annual period.

OPTION TWO: employees receive a lump-sum sick leave bank of 24 hours/3 days at the beginning of each year. If you do this, you need not allow employees to carryover unused accrued sick leave into the next year.

The new law also includes specific posting and notice requirements.