

California Governor Signs A Bevy Of Employment Laws, Vetoes A Few Others

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The 2014/2015 California legislative session may go down as one of the most productive in the state's history, in terms of legislation passed and signed into law. According to the Associated Press, Governor Brown signed 808 bills, and vetoed 133 others. Lest employers worry that they were left out of the Governor's signing party, here are highlights of the most significant employment-related bills affecting the workplace (key legislation vetoed by the Governor is included at the end).

AB 202 Employment Status of Professional Sports Teams Cheerleaders

This bill provides that cheerleaders utilized by a California-based professional sports team during its exhibitions, events, or games are employees subject to the protections of state laws relating to minimum wages, overtime, working conditions, discrimination, harassment and retaliation.

AB 215 Limits on Severance Payments to Public School Superintendents

This bill reduces the severance package a public school superintendent may receive to 12 months of pay, instead of 18 months. Additionally, the bill eliminates a provision that had previously allowed for a six month severance payment in cases of fraud or other malfeasance.

AB 219 Payment of Prevailing Wages for Delivery of Ready-Mix Concrete

This bill provides that the delivery of ready-mix concrete to a "public works" project is work that must be paid the prevailing wage.

AB 229 State Employees Travel Reimbursement

This bill mandates that the state reimburse job-related travel expenses to employees who use "transportation network companies" (such as Uber) and "short-term rental" lodging properties (such as Airbnb), to the same extent that the state reimburses standard travel expenses.

AB 285 Mandatory CLE for Legal Document Assistants and Unlawful Detainer Assistants

Existing law permits registered legal document assistants and unlawful detainer assistants to assist members of the public with certain family law and unlawful detainer matters, without having a law license. LDAs and UDAs are frequently used by individuals who cannot afford an attorney. This bill mandates that legal document assistants and unlawful detainer assistants must participate in 15 hours of continuing legal education every two years.

AB 304 Clarifications Concerning California's Paid Sick Leave Law

This bill clarifies certain provisions of the Healthy Workplaces, Healthy Families Act of 2014, which requires that all California employers provide paid sick leave to their employees. Among other things, this bill clarifies that:

- (1) For an employee to qualify for paid sick leave, she or he must work 30 days *for the same employer*;
- (2) An employer who uses an accrual method for providing sick leave to employees may use an accrual rate other than one hour for every 30 hours worked, so long as employees will have at least 24 hours of accrued sick leave available by the 120th day of employment;
- (3) PTO plans in place prior to January 1, 2015 will comply with the Act in some circumstances, even if the PTO plan uses an accrual method other than one hour for every 30 hours worked;
- (4) Upon re-hiring an employee, an employer need not reinstate accrued sick leave that was previously paid out upon cessation of employment.

AB 359 Mandatory Retention of Grocery Employees by Successor Company

This bill provides that a successor grocery employer must retain employees of the former grocery employer for 90 days and continue to offer continued employment unless the employees' performance during the 90-day period was unsatisfactory.

AB 375 Payment of Differential Pay to Teachers on Maternity and Paternity Leave

Under existing law, school teachers who are out on medical leave and have exhausted their accrued leave benefits are entitled to receive differential pay (the difference between the teacher's salary and the wages paid to the substitute teacher) for up to 5 months.

This law will additionally provide differential pay for up to 12 weeks for teachers who are out on maternity or paternity leave.

AB 621 Motor Carrier Employer Amnesty Program

This bill provides that employers in the drayage (short-distance freight transport) business, who misclassify their employees as independent contractors, can avoid liability by entering into a settlement agreement with the Labor Commissioner prior to January 1, 2017, and by converting all of its commercial drivers to employees, and paying all wages, benefits and taxes owed.

AB 622 Employment: E-Verify System: Unlawful Business Practices

This bill prevents employers from using the E-Verify system to check the employment authorization status of both existing employees and job applicants, except as required by federal law or as a condition of receiving federal funds.

This bill also makes it an unlawful practice where employers check the employment authorization status of existing employees or applicants who have not yet been offered employment.

AB 970 Authority of Labor Commissioner to Enforce Local Wage Laws

This bill authorizes the Labor Commissioner to enforce local laws regarding overtime and minimum wage provisions and to issue citations and penalties for violations, provided the local entity has not already cited the employer for the same violation.

The bill also authorizes the Labor Commissioner to issue citations and penalties to employers who violate the expense reimbursement provisions of Labor Code section 2802.

AB 1245 Unemployment Insurance: Electronic Reporting and Funds Transfers

This bill requires that, effective January 1, 2016, employers with 10 or more employees must file all unemployment insurance reports and returns by electronic funds transfer, or face a fine of 15% for untimely payment of contributions, and a \$20 penalty for each unreported wage item.

As of January 1, 2017, these requirements will apply to all California employers, regardless of size.

AB 1422 Transportation Network Companies

This bill provides that transportation network companies (such as Uber and Lyft) eligible and required to participate in the Department of Motor Vehicles' pull-notice system to regularly check the driving records of participating drivers, regardless of whether the participating driver is an employee or an independent contractor of the transportation network company.

AB 1506 Employer's Right to Cure PAGA Claims

The California Private Attorney General's Act of 2006 (PAGA) allows private employees to sue to recover penalties that the state Labor Commissioner could have collected. Not only do PAGA claims dramatically increase the magnitude of liability against employers, but courts have held that employers cannot include PAGA claims in mandatory arbitration agreements.

This bill seeks to lessen employer liability under PAGA, by giving the employer the right to cure a PAGA claim alleging two specific violations concerning wage statements:

- (1) Labor Code section 226, subsection 6, which requires that employee wage statements contain the inclusive dates of the period for which the employee is being paid; and
- (2) Labor Code section 226, subsection 8, which requires that wage statements contain the name and address of the legal entity that is the employer.

AB 1509 Retaliation Against Family Members

This bill amends Labor Code sections 98.6, 1102.5, and 6310 to forbid employers from retaliating against employees for being a family member of an employee who has, or is perceived to have, engaged in activities protected under those Labor Code sections (*e.g.* making complaints about working conditions or pay, or whistleblowing).

This bill also excludes certain employers from coverage under Labor Code section 2810.3, which provides that employers who use temporary employees provided by a temporary staffing agency, share liability with the temporary staffing agency for wage and workers compensation violations.

AB 1513 Piece-Rate Compensation

Effective January 1, 2016, employers must pay piece-rate employees for rest and recovery periods (and all other periods of “nonproductive” time) separately from (and in addition to) their piece-rate compensation.

Employers must also specify additional categories of information on a piece-rate employee’s itemized wage statement:

- (i) the total hours of compensable rest and recovery periods,
- (ii) the rate of compensation paid for those periods, and
- (iii) the gross wages paid for those periods during the pay period.

If employers do not pay a separate hourly rate for all hours worked (in addition to piece-rate wages), then the employer must also list

- (i) the total hours of other non-productive time,
- (ii) the rate of compensation for that time, and
- (iii) the gross wages paid for that time during the pay period.

AB 1514 EDD Training Benefits

This bill recasts provisions of existing law concerning eligibility for receipt of unemployment benefits while an individual is participating in a training program. Members of a union or trade association, participants in training sponsored by an employer, or individuals participating in a

state or federally approved apprenticeship program will be eligible to receive benefits. This bill also sets forth certain federally funded unemployment benefits to be included within certain benefit provisions.

SB 99 State Employee Labor Negotiations Exception under the Brown Act

The Brown Act requires that publicly elected and appointed bodies must hold open meetings, with some exceptions. One of those exceptions is discussions of labor negotiations, which may be held in closed session. This bill provides that the labor negotiations exception does not permit a community college district's governing board to meet in closed session with its designated representative to discuss the negotiation of a project labor agreement, because the contractors and laborers covered by such an agreement are not district employees.

SB 327 Healthcare Employee Meal Period Waivers

Passed in response to the February 11, 2015 decision in *Gerard v. Orange Coast Memorial Medical Center* (2015) 234 Cal.App.4th where the court found that § 11(D) of IWC Wage Order No. 5-2001 was invalid, thus waivers for healthcare employees were invalid.

Senate Bill 327 basically makes issues regarding waivers in *Gerard* moot, validates meal period waivers for health care employees, and revises California Labor Code § 516 to make it consistent with the IWC Wage Order. **This bill is an urgency statute and takes effect immediately.**

SB 358 California Fair Pay Act

Beginning January 1, 2016, California employers will be subject to one of the strictest and most aggressive equal pay laws in the country. The Act amends Labor Code section 1197.5.

Under the Act, an employer is prohibited from paying employees of the opposite sex lower wage rates for “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.”

- The new standard permits an employee to bring an unequal pay claim based on employee wage rates in any of their employer's facilities and in other job categories as long as the work is substantially similar.
- To successfully defend an equal pay claim, an employer must establish that the entire wage differential is based on the reasonable application of one or more of the following:
 - A seniority system;
 - A merit system;
 - A system which measures earnings by quantity or quality of production; or
 - A bona fide factor other than sex, such as education, training, or experience.

- Employers are prohibited from enacting rules, policies or otherwise engaging in conduct that prohibits employees from disclosing their own wages, discussing the wages of others, asking about other employees' wages or aiding and encouraging employees to exercise rights under the Act. However, employers are not obligated to disclose employees' wages.
- The statute currently allows employee recovery of wages and interest, plus an equal amount as liquidated damages, and attorneys' fees.
- The Act also prohibits discharge, discrimination and retaliation of employees for asserting rights under the Act and permits a civil action seeking reinstatement, reimbursement for lost wages and interest, an equal amount as liquidated damages, lost benefits, and other equitable relief.
- Claims under the Act must be brought within one year of the prohibited conduct. There is no requirement that an employee exhaust administrative remedies prior to filing suit.
- Employers must maintain records of employees' "wages and rates of pay, job classifications, and other terms and conditions of employment" for a three-year period.

SB 501 Wage Garnishment Restrictions

This bill reduces the maximum amount of an employee's weekly income that can be subject to wage garnishment.

SB 579 Clarification of Kin Care Law; Expansion of School Activities Leave

This bill amends California's Kin Care law (Labor Code section 233), which requires employers to allow employees to use one-half of their accrued sick leave to care for a "family member". This amendment ties Kin Care's protections to the reasons and definition of "family member" specified in the California paid sick leave law that took effect July 15, 2015.

The bill also expands coverage of California's school activities leave (Labor Code section 230.8) to include day care facilities and cover child care provider emergencies, and the finding, enrolling, or reenrolling of a child in a school or day care, and would extend protections to an employee who is a step-parent or foster parent or who stands in loco parentis to a child.

SB 588 Enforcement of Judgments by Labor Commissioner

Among other things, this bill authorizes the Labor Commissioner to file a lien on the employer's property in California for unpaid wages, and other compensation, penalties, and interest owed to an employee.

SB 644 Alternative Job Application Options for Individuals with Disabilities

This bill permits a person with a developmental disability to either complete a written examination or readiness evaluation or an internship to qualify for civil service employment under Limited Examination and Appointment Program (LEAP).

SB 667 Disability Insurance Waiting Period

This bill waives the 7-day waiting period for an individual who has already served the 7-day waiting period for the initial claim when that person files a subsequent claim for disability benefits for the same or a related condition within 60 days after the initial disability benefit period.

SB 703 Discrimination Based on Gender Identity

This bill provides that the state of California may not contract with employers that discriminate between employees on the basis of gender identity when providing health benefits.

The Governor also vetoed bills that would have added to what many employers see as an already burdensome employment environment:

SB 3: would have increased California's minimum wage to \$11 an hour in January 2016 (rather than the currently scheduled increase to \$10 an hour), to \$13 by July 2017, and with annual inflation-based increases beginning in 2019.

SB 406: would have expanded the CFRA to cover employers of 25 or more employees.

AB 464: would have prohibited employers from asking applicants to disclose their current employment status.

AB 465: would have ended mandatory employment arbitration agreements

AB 676: would have prohibited job advertisements that discourage the unemployed from applying.

AB 908: would have increased the duration of Paid Family Leave benefits from six weeks to eight weeks.

AB 1017: would have prohibited employers from seeking salary history information from job applicants

Please do not hesitate to contact any one of Weintraub Tobin's Labor and Employment attorneys for more information or assistance in determining which new laws apply to you.