

Happy New Year (to California Employees)

By: Shauna N. Correia

The year-end holidays tend to be a time when employers and employees are either winding down for the year or making one last big push to close the year strongly. California employers should make time this week, though, to ensure they are ready for the new laws which will take effect in California this Friday – New Year’s Day – that will directly and immediately impact the workplace.

As a reminder, below are the most notable employment-related new laws effective January 1, 2016. The list includes minimum wage hikes, other wage and hour amendments, expanded time off and sick leave, and expanded enforcement of state and local wage and hour laws conferred upon the Labor Commissioner.

Companies should ensure that their pay practices, handbooks, job descriptions and records retention practices are compliant with the new laws and ensure that internal or third party payroll processors, supervisors, and human resources personnel are up to date, particularly regarding the new equal pay and leave laws and whistleblower, discrimination, and retaliation protections. (The following is not an exhaustive list of the hundreds of new laws that take effect in 2016 and is only a summary of the laws listed. Please consult your employment attorneys at Weintraub Tobin to answer questions and provide the details and nuances as applied to your company.)

1. Wage & Hour Laws

- **Minimum Wage Increases:** Minimum wages increase from \$9.00 to \$10.00 per hour state-wide. (Also, the city-wide minimum wages will go up later this year in San Francisco (to \$13.00 on July 1), Los Angeles (to \$10.50 on July 1), and Berkeley (to \$12.53 on October 1.) For employees to satisfy the salary basis test for exempt status, the minimum annual salary for bona fide executive, professional, and administrative employees will increase from \$37,440 to \$41,600 (two times state minimum wage for the first 40 hours of employment each week).
- **Equal Pay Act:** Under existing law (Labor Code section 1197.5), an employee complaining of unequal pay must show he or she is being paid less than a member of the opposite sex who performs "equal work" (interpreted as a person with the same job title) in the "same establishment." SB 358 broadens and muddies the waters effective January 1: employees now must be paid the same as their opposite sex counterparts who perform "substantially similar work." "Substantially similar work" is a "composite of skill, effort, and responsibility, and is work performed under similar working conditions," regardless of job title. Further, SB 358 eliminates the "same establishment" requirement. If challenged, employers can justify different pay if the

employer can defend their pay system if it is based on one or more of the following factors:

- o A seniority system
- o A merit system
- o A system that measures earning by quantity or quality of production
- o A bona fide factor other than sex, such as education, training, or experience.

The law also requires that employers maintain records of the wages and wage rates, job classifications, and “other terms and conditions of employment of the person employed by the employer” for three years.

Employers may not restrict employees from disclosing or discussing wages, asking about another employee’s wages, or encouraging others to exercise their rights under the law.

2. Leave Laws

- **Time Off for Employees with Children (Applies to Employers of 25+ Employees):** State law permits employees of employers with 25 or more employees, to take up to 40 hours of time off work to participate in school activities, and prohibits employers from discriminating against or discharging a parent, guardian, or grandparent with custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12 from taking such time off. SB 579 expands these rights by replacing “child day care facility” with the broader term “child care provider.” Also, employees who are a guardian, stepparent, foster parent, or who stand in loco parentis (in place of a parent) to a child are now protected by the law.
- **California’s Kin Care Law Expanded:** Labor Code section 233 requires employers to allow employees to use the equivalent of six months’ accrued six leave to care for family members, as defined in the Healthy Workplaces, Healthy Family Act of 2014. The Kin Care law is amended under SB 579 to provide that employers must allow employees to use up to one-half of their sick leave to attend to (a) victims of domestic violence or (b) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or the employee’s family member. “Family member” was previously defined as a child, parent, spouse, or domestic partner but now also includes grandparents, grandchildren, and siblings.
- **Time Off for Employees with Children (Applies to Employers of 25+ Employees):** State law permits employees of employers with 25 or more employees, to take up to 40 hours of time off work to participate in school activities, and prohibits employers from discriminating against or discharging a parent, guardian, or grandparent with custody of a child in a licensed child day care facility or in kindergarten or grades 1 to

12 from taking such time off. SB 579 expands these rights by replacing “child day care facility” with the broader term “child care provider.” Also, employees who are a guardian, stepparent, foster parent, or who stand in loco parentis (in place of a parent) to a child are now protected by the law.

3. Labor Commissioner Enforcement

- **Labor Commissioner to Police Local Wage Violations and Expense Reimbursement Violations:** AB 970 gives the Labor Commissioner authority to investigate, and at the request of a local government, to enforce local overtime or minimum wage laws. The Labor Commissioner has authority to issue citations and penalties for violations, but cannot issue duplicate violations. The bill also authorizes the Labor Commissioner to enforce Labor Code section 2802 which requires employers to reimburse employees for all business related costs directly incurred by employees in discharging duties for the employer.
- **Fair Day’s Pay Act:** SB 588 amends the Labor Code to give the Labor Commissioner more collection and enforcement tools to collect judgments against employers found liable for unpaid wages. Now, the Labor Commissioner may use the collection tools available to judgment creditors to go after employers, including issuance of liens against the employer’s real property (as provided by existing law) and personal property and levies upon bank accounts and accounts receivables. More significantly, if an employer has a judgment entered against it for wage violations that is not paid within 30 days after the time to appeal expires, the employer will be required to obtain a bond in order to continue to do business in California. Also, a person who is noticed with a levy (such as a third party who owes the employer money) will become personally liable to the Labor Commissioner for the amount of the judgment, if he or she fails to surrender the employer’s credits, property or money or to pay the debts owed in his or her possession.

4. Miscellaneous

- **Employer’s Use of “E-Verify” is Limited:** AB 622 amends Labor Code section 2814 by broadening the definition of an unlawful employment practice. It is now an “unlawful employment practice” to misuse “E-Verify”, an electronic program that electronically checks status of authorization to work in the United States. Put simply, misuse of E-Verify is defined as using the system to check on employment authorization status, other than when required by federal law. The bill also requires an employer that uses the E-Verify system to provide the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee’s E-Verify case or any tentative non-confirmation notice “as soon as practicable.” A civil penalty of \$10,000 may be imposed on an employer for each violation.

- **Whistleblower Protections Expanded to Co-Employee Family Members of Whistleblowers:** Whistleblowers are protected from retaliation under existing law. AB 1509 will prohibit employers from retaliating against any employees who are family members of whistleblowing employees. The same law makes a change to an unrelated Labor Code provision, 2810.3, to exclude certain “household goods” carrier employers from joint liability imposed between the client employer and a labor contractor.