

New California Laws – 2018

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We are writing to bring you up to date regarding key California employment laws that take effect in the upcoming year. What follows is a description of newly approved California laws, effective January 1, 2018, at least some of which may impact your company directly if you have employees in the Golden State.

1. SB 3 – Minimum Wage Increase

On January 1, 2018, the California state minimum wage increases to \$11.00 per hour for businesses with 26 or more employees. Small businesses with 25 or fewer employees will continue to pay a minimum wage of \$10.50 per hour. Remember, this increase also impacts the “salary basis” component of the test for exemption from overtime under California law, which requires exempt employees to earn a salary equivalent no less than two times the state minimum wage for full-time employment. Beginning January 1, exempt employees must be paid an annual salary of at least \$45,760 for employers with 26 or more employees. For employees with 25 or fewer employees, the minimum salary for exempt employees remains at \$43,680.

2. AB 908 – Paid Family Leave and State Disability Insurance Benefits

This law increases the amount of PFL or SDI benefits an employee can receive to either 60% or 70% of earnings, depending on the employee’s income. There will still be a maximum weekly benefit limit on the amount received. The law removes the current seven-day waiting period that exists before an employee is eligible to receive PFL benefits.

3. AB 1008 – State-Wide Ban-the-Box Law

This law applies to employers with five or more employees, and prohibits employers from asking about criminal history on job applications. The law also prohibits inquiring about or considering criminal history at any time before a conditional offer of employment has been made. Once a conditional offer is made, an employer may seek certain criminal history.

Any preliminary decision not to hire because of a conviction history requires written notice to the applicant, who must be given the opportunity to respond. A specific timeline and process must be followed. The employer must consider any information provided by the applicant before making a final decision. If the employer makes a final decision to deny employment in whole or in part because of the criminal conviction, written notice to the applicant is again required. Specific information must be included in the final determination notice.

4. AB 168 – Salary History

AB 168 prohibits employers from asking about a job applicant's salary history, including information on compensation and benefits. Employers also are banned from seeking this information through an agent, such as a third-party recruiter. This new law also prohibits employers from relying on salary history information as a factor in determining whether to hire an applicant or how much to pay the applicant. However, an employer may consider salary information that is voluntarily disclosed by the applicant without any prompting. Upon reasonable request, an employer must provide a job applicant with a pay scale for the position. As a result, employers must carefully analyze the value of each position before posting for new positions because informing applicants that salary expectations are "commensurate with experience" will no longer be acceptable.

5. AB 450 – Worksite Immigration Enforcement and Protections

This law provides workers with protection from immigration enforcement while on the job. Employers are prohibited from (1) providing federal immigration enforcement agents access to nonpublic areas without a judicial warrant, and, (2) providing agents access to employee records without a subpoena or judicial warrant. This prohibition does not apply to Form I-9 inspections.

Regarding Form I-9 inspections, employers must: (1) post a notice to all current employees informing them of any federal immigration agency's inspections of Form I-9 or other employment records within 72 hours of receiving Notice of Inspection, (2) provide a copy of the Notice to an affected employee upon reasonable request, and, (3) give each affected employee and the collective bargaining representative (if applicable) a copy of inspection results and written notice of the employer's and employee's obligations arising from the inspection within 72 hours of receiving the results.

An employer that fails to follow notice requirements can be fined between \$2,000-\$5,000 for a first violation and \$5,000 and \$10,000 for each subsequent violation.

6. SB 396 – Addition to Harassment Prevention Training Topics

The supervisor harassment training provided every two years (for employers with 50 or more employees) must now include a discussion of harassment based on gender identity, gender expression, and sexual orientation. This law also requires employers to display a poster on transgender rights to be developed by the Department of Fair Employment and Housing.