

## **New Employment Laws Affecting California Employers Take Effect on January 1, 2015**

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Once again this year the California Legislature was busy enacting laws that will govern the employment relationship. We summarize below the 11 most significant of these new laws affecting private-sector employers. These laws take effect on January 1, 2015, although certain new obligations will be deferred to a later date, as discussed below.

We also summarize below several important new ordinances that will affect many employers in San Francisco and Oakland, California.

### ***A.B. 1522: Paid Sick Leave***

California has become the second state, after Connecticut, to require that employers provide paid sick leave to their employees to cover absences for medical care or treatment of employees or their family members. Beginning on July 1, 2015, eligible employees will be entitled to accrue one hour of paid sick leave for every 30 hours worked, and to take up to three days of accrued sick time off, with pay, each year. By January 1, 2015, employers must post notices of this law in their workplaces. We previously prepared a detailed summary of the paid sick leave law, which is found at <http://www.gbglp.com/assets/2015-california-paid-sick-leave.pdf>.

### ***A.B. 1897: Shared Liability for Pay Violations Committed by Staffing Companies***

This bill mandates that when an employer uses a staffing company ("labor contractor") to supply non-exempt workers to perform labor within the client employer's "usual course of business," the client-employer must share with the staffing company all civil liability for any wage violations committed by the staffing company pertaining to those workers, or the staffing company's failure to secure workers' compensation coverage for those employees. In addition, employers are prohibited from shifting onto staffing companies their legal duties under workplace safety laws.

The statute does not preclude the client employer or the staffing company from seeking contractual indemnity for liability created by the acts of the other party.

As a result of this new law, employers who use staffing companies will need to be more vigilant in monitoring the pay practices of the staffing companies to ensure they are compliant with the Labor Code.

### ***A.B. 2053: Supervisory Training on Abusive Conduct***

Existing law requires California employers with 50 or more employees to conduct supervisory training every two years on sexual harassment and other forms of unlawful harassment. Under this new law,

covered employers will be required to include “prevention of abusive conduct” as a component of this supervisory training.

The law defines “abusive conduct” as “conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests.” Abusive conduct may include “repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance.”

This definition of “abusive conduct” goes beyond anything in the California Fair Employment & Housing Act, or other California laws, because it addresses conduct that is not motivated by any of the forms of discrimination regulated by the FEHA. However, this law does not make all abusive conduct unlawful in California if the conduct is not tied to an unlawful category of discrimination or harassment under the FEHA. Instead, it only requires that employers conduct supervisory training on abusive conduct. This statute could end up being a first step toward the eventual prohibition of abusive conduct or bullying in the workplace, even when such conduct is not otherwise “discriminatory.”

***A.B. 1443: Unpaid Interns Protected Against Discrimination and Harassment***

This bill extends the coverage of the Fair Employment & Housing Act to unpaid interns. Specifically, employers are prohibited from discriminating against any person in the selection, termination, training, or other terms or treatment of that person in an unpaid internship, on the basis of any of the FEHA’s prohibited factors: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The bill also prohibits the harassment of an unpaid intern or volunteer on any of these bases. Harassment is actionable if the employing entity, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

This bill does not otherwise attempt to regulate the circumstances under which interns must be paid for their labor. As widely reported, this has been the subject of considerable litigation under federal and California law, much of it ongoing.

***A.B. 1660: No Discrimination Against Undocumented Workers Who Obtain California Driver’s License***

California law now allows undocumented workers to apply for and receive a California driver’s license. AB 1660 amends the Fair Employment & Housing Act by making it an unlawful employment practice for an employer to discriminate against an individual because he or she holds or presents a driver’s license issued under the provision governing undocumented workers. The bill also expands the definition of “national origin discrimination” in the FEHA to include discrimination on the basis of possessing a driver’s license granted under the provision of the Vehicle Code that allows undocumented workers to obtain a license.

Under the bill, it will also be unlawful for an employer to require a person to present a driver's license, unless possessing a driver's license is required by law, or it is required by the employer and the employer's requirement is otherwise permitted by law.

***A.B. 1723: Expanded Remedies for Minimum Wage Violations***

This bill expands the civil penalty in Labor Code section 1197.1 for a minimum wage violation to incorporate any applicable waiting time penalties that would be due under Labor Code section 203 (up to 30 days' pay) for employees who have resigned or have been terminated.

Under existing law, the civil penalty for a minimum wage violation is limited to \$100 (for an initial violation) or \$250 (for a subsequent violation) per pay period for each underpaid employee, plus restitution and liquidated (double) damages. Under the new law, the Labor Commissioner will have the authority to include waiting time penalties in any citation relating to a minimum wage violation. It appears that aggrieved employees can also now pursue waiting time penalties as part of the civil penalty for a minimum wage violation when bringing an action under the Private Attorneys General Act ("PAGA").

***A.B. 2074: Extended Statute of Limitations for Liquidated Damages Claims***

Existing California law allows employees to recover liquidated (double) damages when they prevail in an action to recover minimum wages. This bill clarifies that an employee may file a suit for liquidated damages, independent of a suit to recover the underlying wages, and that the statute of limitations for such a suit would be the same as for an action to recover the underlying wages – namely, three years.

***A.B. 26: Prevailing Wages Must be Paid for Clean-Up Work***

This law expands the definition of public works "construction" that must be paid at prevailing wage rates. Under the new definition at Labor Code section 1720, "construction" includes the post-construction phases of the job, including but not limited to all cleanup work at the jobsite.

***A.B. 1650: Bidders on Public Works Contracts May Not Ask about Criminal Convictions***

This law, entitled the "Fair Chance Employment Act," requires that any party submitting a bid for a state contract involving onsite construction-related services, must certify that it will not ask applicants for employment to disclose (orally or in writing), information concerning their conviction history. The law does not apply if another federal or state law otherwise requires that the applicant undergo a conviction history background check.

***A.B. 1791: Disclosure of Information about Employees Receiving Public Assistance***

This bill is an effort to discourage employers from paying low wages and no benefits, which the Legislature has found to be effectively shifting the costs of doing business onto taxpayers by forcing employees into applying for public assistance. This bill will require state agencies to compile

information on employers that employ at least 100 employees who are enrolled in the Medi-Cal program. Information on the 500 California employers who have the most employees enrolled in Medi-Cal will be posted annually on an agency website, together with data on the number of Medi-Cal beneficiaries each employer employs and the percentage of the employer's total California workforce that are made up of public assistance enrollees.

This law otherwise prohibits employers from disclosing that an employee receives or is applying for public benefits, unless required by law to do so. The law also prohibits employers from discriminating against any employee or applicant on the basis that the person is enrolled in a public assistance program.

### ***A.B. 1299: Workplace Violence Prevention Plans for Hospital Employees***

For many years California employers have been required to establish Injury and Illness Prevention Plans ("IIPP") as part of their safety responsibilities. This bill will require most acute care hospitals and psychiatric facilities to adopt a workplace violence prevention plan as a part of the hospital's IIPP, to protect health care workers and other facility personnel from aggressive and violent behavior by patients and others. The statute details the elements that the violence prevention plan must contain. The Occupational Safety and Health Standards Board will issue regulations governing the timing and contents of the required violence prevention plans.

In addition, covered hospital employers will be required to orient and train employees, including temporary employees, on their workplace violence prevention plans, and to maintain records of any violent incidents affecting a hospital employee.

### **Important New San Francisco and Oakland Ordinances**

No local governing body in the United States regulates employers more extensively than does the San Francisco Board of Supervisors. Its two most recent enactments are summarized below.

#### ***1. Predictable Scheduling and Fair Treatment for Retail Workers***

A pair of ordinances, which together are referred to as the "Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance," will take effect on January 7, 2015. However, the substantive provisions, described below, will not become operative until on or about July 6, 2015. The Ordinance is directed at "formula retail establishments," which the Legislature has found to be maintaining erratic and unpredictable scheduling practices. Formula retail establishments generally are retail businesses that have at least 20 sales establishments located worldwide. The Ordinance covers all formula retail establishments that employ at least 20 employees in San Francisco. It also covers "property services contractors" who perform work at a formula retail establishment, such as a janitorial contractor.

Upon hiring a new employee, covered employers must provide a good faith estimate in writing of the new employee's expected minimum number of scheduled shifts per month, and the days and hours of

those shifts, excluding on-call shifts. The estimate will not be a binding contractual commitment. Prior to the start date, the new employee may request that the employer modify the proposed work schedule. The employer must consider any such request but is not required to honor it.

Covered employers also must provide current employees with at least two weeks' notice of their work schedules. These biweekly schedules can either be posted at the workplace or transmitted electronically. The biweekly work schedules must include any on-call shifts, where applicable.

Whenever an employer changes an employee's schedule during the two-week period, it must provide prompt notice of the change by an in-person conversation, telephone call, email, text message, or other electronic communication. When it makes such a change, the employer generally must also pay the affected employee one to four hours' extra pay, depending on how much advance notice it provided.

With certain limited exceptions, covered employers also must pay on-call employees for each shift in which the employee is required to be available but is not called in to work. This includes two hours' pay at the employee's regular hourly rate for each on-call shift of four hours or less, and four hours' pay at the employee's regular hourly rate for each on-call shift of more than four hours. This pay requirement does not apply if the employee is actually called in to work for the on-call shift, or if the employer provides the employee with at least 24 hours' notice that the on-call shift has been cancelled or moved to another date or time. This on-call pay does not apply in cases where an on-call shift was necessitated by another employee's sudden or unexpected absence from work.

Additionally, the Ordinance requires that, in general, employers must pay part-time employees (defined as those who work fewer than 35 hours per week) the same hourly rate as are paid to full-time employees who perform jobs that require equal skill, effort, and responsibility, and that are performed under similar working conditions. Employers must also provide part-time employees with the same access to employer-provided paid and unpaid time off as is afforded to full-time employees in the same job classification, although the time-off benefits may be pro-rated based on the number of hours the part-timers work. Employers also must provide part-time employees with the same eligibility for promotions as are afforded to full-time employees in the same job classification, except that an employer may condition eligibility for promotion on the employee's availability for full-time employment.

Before a covered retail establishment, or its property services contractor, may use a contractor or a temporary services or staffing agency, it must first offer the additional work to any existing part-time employees who are qualified to perform the work, until those part-time employees are given 35 hours of work in a week. The offer of additional work must be made in writing, and the written offers must be retained for at least three years.

Finally, when a "formula retail establishment" is sold, transferred or otherwise experiences a "change in control," the successor employer generally must offer to retain the incumbent's employees for at least 90 days following the change in control, at the same pay rates and under the same general terms and conditions as existed with the incumbent employer.

As typical of the many other San Francisco employment ordinances, this Ordinance contains a notice-posting requirement, a record retention requirement (which may include retention of text messages if texts are used to change shifts), a prohibition against retaliation or discrimination, and an extensive enforcement and remedial scheme.

## **2. Disclosure of Compensation for Equal Pay Reports**

In an effort to combat wage discrimination, the San Francisco Board of Supervisors has enacted a new Ordinance that will require most employers who have contracts with the City and County of San Francisco to disclose confidential pay information to the City's Human Rights Commission. The Ordinance covers contractors and subcontractors that employ at least 20 employees worldwide if the City contracts meet a specified dollar threshold.

These "Equal Pay Reports" will require disclosure of confidential data on the amount of compensation paid to employees identified by sex and race, among other things. A newly-created Equal Pay Advisory Board will analyze this information to identify wage gaps between men and women of the same or different races and among members of different races. The Advisory Board will use this information to recommend steps to address wage gender-based or race-based wage gaps and recommend legislative changes, if needed. This Ordinance takes effect on January 16, 2015. However, the first of these Equal Pay Reports will not be due until a later date to be determined by the Advisory Board, not later than January 31, 2016.

## **3. Oakland's Measure FF: Minimum Wage, Paid Sick Leave, and Service Charges**

On November 4, 2014, the voters in Oakland passed Measure FF, which will profoundly affect employers who have employees in that city. Measure FF amends Oakland's Municipal Code by establishing a minimum wage of \$12.25, effective March 2, 2015, for essentially all employers. The new law protects any employee who in a particular week performs at least two hours of compensable work within the geographic boundaries of the City of Oakland. Moreover, the minimum wage will be adjusted on January 1 of each year, beginning on January 1, 2016, based on increases to the cost-of-living index.

Measure FF also requires employers to begin providing paid sick leave to their employees on March 2, 2015. The Oakland paid sick leave provisions are patterned after the San Francisco Paid Sick Leave Ordinance. Employers with 10 or more employees (no matter where they are employed) will be required to offer paid sick leave to their Oakland employees at an accrual rate of one hour of sick leave for every 30 hours worked, up to a cap of 72 hours (nine days). Employers who normally employ fewer than 10 employees during a given week can cap the sick leave accrual at 40 hours (five days). Unused paid sick leave will carry over from year to year, subject to these caps. Paid sick leave can be used for employees' own illnesses, injuries, medical diagnosis or treatment, or that of their family members. This includes a spouse, registered domestic partner, child, parent, sibling, grandparent, grandchild, or (if there is no spouse or registered domestic partner) some other "designated person."



Paid sick leave will begin to accrue as of March 2, 2015. Employees hired after March 2, 2015 will be entitled to use paid sick leave after 90 calendar days of employment with the employer.

Finally, Measure FF requires that when employers in the hospitality industry (restaurants, hotels or banquet providers) assess “service charges” to their customers, the employer must pay over those service charges, in their entirety, to the non-supervisory workers who performed the services for the customers. The payments must be distributed to the hospitality workers by the pay period following the one in which the service charges were collected.

This new Oakland ordinance forbids employers from reducing an employee’s existing compensation or benefits as a means of paying for the increased labor costs caused by the ordinance. Oakland employees who assert a violation of the law will be permitted to bring a private court action to recover any available remedies, including civil penalties up to \$1,000 per violation.

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Affected employers should be taking the necessary steps to comply with these new laws. Please contact us if you have questions about any of these new laws and ordinances.