



December 2013

Ring in the New Year: A Summary of New California Employment Laws for 2014

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California's 2012-2013 Legislative Session concluded with the enactment of a variety of new laws that will affect California employers. In light of these developments, summarized below, California employers should review their employment policies and practices to ensure compliance with new legal obligations. The new laws generally take effect on January 1, 2014, unless otherwise indicated.

Minimum Wage / Overtime

California's minimum wage will increase to \$9.00 per hour effective July 1, 2014, and further increase to \$10.00 per hour effective January 1, 2016. (AB 10.)

In addition to affecting hourly employees, these increases may have an impact on employees who are "exempt" from overtime, due to related increases in threshold compensation that must be paid to qualify for various exemptions. For certain state law executive, administrative and professional exemptions, the employee must be paid a salary of at least twice the state minimum wage for full-time employment. In addition, for the commissioned inside sales exemption, the employee's earnings must exceed 1½ times the state minimum wage.

Employers in the cities of San Francisco and San Jose should also note that effective January 1, 2014, San Francisco's minimum wage will increase to \$10.74 per hour and San Jose's minimum wage will increase to \$10.15 per hour.

The compensation threshold for California's computer software employee exemption increases annually, as it is tied to the Consumer Price Index. Effective January 1, 2014, the threshold compensation component to qualify for this exemption increases to \$40.38 per hour, or \$7,010.88 per month, or \$84,130.53 per year.

In addition, due to passage of the Domestic Worker Bill of Rights Act (AB 241), domestic work employees who work as personal attendants are now eligible for overtime. This generally includes, with some exceptions, individuals who are employed to work in a private household to supervise, feed or dress a child or a person who needs supervision by reason of advanced age, physical disability or mental deficiency. They are entitled to 1½ times their regular rate of pay for work in excess of nine hours in a workday or 45 hours in a workweek.

Recovery Periods

Under existing Cal-OSHA regulations, employees who work outside in temperatures exceeding 85 degrees must be provided with five-minute cool-down periods (recovery periods) in a shaded area on an as-needed basis to protect from overheating. The Labor Code statute for meal and rest periods has been amended to include recovery periods. (SB 435.) Employers are prohibited from requiring employees to work during a recovery period, and must pay them one additional hour of pay for each workday a required recovery period is not provided.

Retaliation Based on Immigration Status/Exercising Labor Code Rights

Companion bills (AB 263, SB 666) protect undocumented workers from retaliation for pursuing employment-related claims. Employers are prohibited from reporting or threatening to report a current, former or prospective employee's suspected immigration status, or the suspected immigration status of his or her family member, in retaliation for exercising a right related to his or her employment. Violation may result in revocation of the employer's business license, civil penalties and/or criminal penalties. In addition, an attorney who engages in such conduct toward a witness or party to a civil or administrative action may be subject to suspension, disbarment or other discipline.

These new laws further provide that an employer that retaliates against an employee or applicant for exercising rights under the Labor Code may be subject to a civil penalty of up to \$10,000. The new laws also clarify that an individual is not required to exhaust administrative remedies or procedures prior to bringing a civil action under the Labor Code, unless the specific Labor Code statute under which the action is brought expressly requires exhaustion of an administrative remedy.

Expanded Protection for Whistleblowers

Existing law prohibits employers from retaliating against an employee for disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of a state or federal rule or regulation. This law has been expanded to also prohibit retaliation against an employee who makes an internal complaint to a supervisor or other employee with authority to investigate, discover or correct the violation. (SB 496.) The law also has been amended to cover disclosures pertaining to perceived violations of local rules or regulations.



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Driving Privileges for Undocumented Workers

A new law (AB 60) requires the Department of Motor Vehicles to issue driver's privileges to an individual who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law, if he or she meets all other qualifications for licensure and provides satisfactory proof of his or her identity and California residency. This law further provides that it is a violation to discriminate against an individual because he or she holds or presents a license issued under these provisions. This law will take effect when the Director of the DMV issues a declaration of readiness to issue the new licenses, or on January 1, 2015, whichever is earlier.

Employers should note that this special driver's license does not satisfy federal I-9 requirements for verifying employment eligibility of new hires. The special license will include a recognizable feature, such as the letters "DP" instead of "DL," but will not have any other distinguishable features.

Anti-Discrimination / Anti-Harassment Laws

The Fair Employment and Housing Act ("FEHA") prohibits employment discrimination and harassment based on a variety of protected categories. FEHA has been amended (AB 556) to add "military and veteran status" to the list of protected categories. This is defined to include members or veterans of the United States Armed Forces, the United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

FEHA also has been amended (SB 292) to state expressly that sexually harassing conduct need not be motivated by sexual desire. The Legislature made this clarification in response to a California appellate court opinion issued in 2011, *Kelley v. The Conco Companies*, 196 Cal.App.4th 191.

Dismissed or Sealed Convictions

Current law restricts employers from considering certain criminal records in making hiring or employment decisions. A new law (SB 530) prohibits an employer from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a conviction that has been judicially dismissed or ordered sealed, unless certain limited exceptions apply.

Crime Victim Leaves of Absence / Accommodation / Anti-Retaliation

Multiple new laws augment employment protections for crime victims. Existing law prohibits an employer from taking adverse

employment action against an employee who is a victim of domestic violence or sexual assault and needs to take time off from work to seek relief. A new law (SB 400) extends these protections to victims of stalking. This new law additionally expands protections to prohibit retaliation because of the employee's status as a victim, and requires employers to provide reasonable accommodation upon request for the victim's safety while at work.

Another new law (SB 288) prohibits employers from retaliating against an employee who is a victim of a serious felony or other specified crimes for taking time off from work, upon the victim's request, to appear in court to testify at related proceedings.

Leave for Reserve Peace Officers and Emergency Rescue Personnel

Existing law requires companies with 50 or more employees to permit temporary leaves of absence for volunteer firefighters. This law has been expanded (AB 11) to also cover reserve peace officers and emergency rescue personnel.

Family Care

California's Employment Development Department administers a state disability insurance program that provides Paid Family Leave (PFL) wage replacement benefits for employees who take time off to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new child. This law has been expanded (SB 770) to cover time off to care for a seriously ill sibling, grandparent, grandchild or parent-in-law.

In addition, San Francisco has adopted the Family Friendly Workplace Ordinance, which applies to employers with 20 or more employees. This new ordinance allows eligible employees working in San Francisco to request a flexible or predictable working arrangement to assist with caregiving responsibilities for children or family members, and requires the employer to respond to the request.

Employer Recovery of Attorney's Fees

The Labor Code previously provided for an award of attorney's fees to the prevailing party in an action brought for the nonpayment of wages. This law has been amended (SB 462) to limit a prevailing employer's recovery of attorney's fees to situations where the employer can show that the employee brought the action in bad faith.



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These provisions augment California's expansive repertoire of employee protections. California employers should consider auditing their current policies and practices accordingly, and make any necessary changes to ensure they are in full compliance with the new laws.



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