



# CALIFORNIA

## EMPLOYMENT LAW LETTER

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### LOCAL REGULATION

## What you need to know about the continuing trend to regulate employers at the local level

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*The increasing regulation of private-sector employers at the city, county, and local regional agency level is a significant continuing trend. Many state and federal employment laws expressly allow or don't expressly preempt further regulation at the local level. Such regulatory power was mostly dormant for many years because local government agencies generally declined to regulate the employment practices of employers that didn't engage in government contracting or leasing activities at the local government level.*

*Now, cities and other local agencies in California and throughout the rest of the country are enacting laws regulating paid sick leave, commuter benefits, leave and caregiver accommodation requirements, employment applications and background checks, and expanded categories of prohibited discrimination.*

### **Employment practices subject to local regulation**

**Paid sick leave.** Cities with local ordinances requiring employers to provide paid sick leave include Washington, D.C.; Jersey City, New Jersey; Portland, Oregon; New York City; San Francisco; and Seattle, Washington. While many employers provide some form of sick leave to their employees as a matter of policy, those policies frequently fail to meet various local ordinance requirements. For example, many municipal ordinances:

- Require employers to provide paid sick leave to categories of employees who aren't generally covered under standard employer policies, including part-time and temporary employees;
- Require that sick leave accrue on a different schedule from that used by many employers;

- Limit employer rights to notification employers may require from employees and to obtain documentation of the need for sick leave;
- Provide that sick leave can be used to care for broad categories of family members; and
- Create broad antiretaliation requirements, sometimes including presumptions of retaliation for disciplining employees within a specified period of time after they take sick leave.

The ordinances also frequently have posting requirements. There's a concerted push across the country, headed by labor unions, to pass similar laws, and we expect that more cities will be adopting paid sick leave ordinances in the near future.

**Family and caregiver leave.** Local sick leave ordinances generally permit eligible employees to use sick leave to care for family members. However, several local government agencies have adopted additional family leave and accommodation policies.

For example, although most multistate employers know that several states (including California) have their own family and medical leave laws, at least one local government agency, Miami-Dade County, also has a family leave ordinance applicable to employers that have 50 or more employees working in the county. Similarly, San Francisco provides employees with the right to request flexible or predictable working arrangements to assist with their caregiving responsibilities. Finally, New York City recently amended its Human Rights Law to require employers to accommodate pregnant employees. With an increasing emphasis on family care obligations, we expect to see more cities adopting similar ordinances in the near future.



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**Minimum wages.** Cities with their own general minimum wage laws currently include San Francisco (\$10.74 per hour for 2014) and San Jose (\$10.15 per hour for 2014) in California, and Albuquerque (\$8.60 per hour for 2014, or \$7.60 per hour if certain benefits are provided) and Santa Fe (\$10.66 per hour for 2014) in New Mexico. Other cities currently considering the adoption of a general minimum wage include San Diego and Richmond, where the city council recently approved proposed legislation that would adopt a minimum wage of \$12.30 per hour by 2017.

Many cities with minimum wage ordinances index the minimum wage to the cost of living, causing it to fluctuate on an annual basis. As with paid sick leave laws, minimum wage ordinances typically include posting requirements.

**Other employee benefits.** Some cities and local government agencies require other employee benefits. For example, San Francisco requires employers to pay for minimum health care. Similarly, employers with an average of 50 or more employees within the Bay Area Air Quality Management District who work 30 or more hours per workweek must provide commuter benefits to employees working in the district, which includes all or part of the following nine Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. Moreover, employers too small to be subject to the Bay Area Commuter Benefits Program may still be subject to local ordinances if they have employees working in Berkeley, Richmond, or San Francisco.

**Limits on job applications and employee background checks.** Employers often seek wide-ranging background information about job applicants in the hopes of hiring the best employees and avoiding the next “problem” employee. However, over the last several years, there has been a significant increase in legislation limiting employers’ ability to request and obtain information about employees’ and job applicants’ creditworthiness and criminal histories. That includes a push for the adoption of “ban-the-box” laws prohibiting private-sector employers from seeking information about an

applicant’s criminal history until after he has been selected as a potential candidate, given an initial interview, and/or received a conditional offer of employment.

Cities that have adopted limitations on soliciting information about a job applicant’s criminal background history or have limited employers’ rights to conduct criminal background checks include Buffalo, New York; Madison, Wisconsin; Newark, New Jersey; Philadelphia, Pennsylvania; San Francisco; and Seattle, Washington. Chicago restricts the ability of employers to obtain credit reports and related information from employees and job applicants. We expect this trend to continue at both the state and local level.

**Drug testing.** San Francisco and Boulder, Colorado, are among cities that regulate private-sector drug testing regardless of contractor status. That doesn’t appear to reflect a trend, but you should be aware of limitations on drug testing in the jurisdictions in which you conduct business.

**Other protected categories.** While California already prohibits discrimination on the basis of gender identity and sexual orientation, many municipalities throughout the country have adopted ordinances with similar prohibitions, including many in states that don’t bar such discrimination. New York City recently adopted a law prohibiting discrimination based on the fact that a job applicant is currently or was previously unemployed. Some municipalities prohibit discrimination based on height and weight or personal appearance.

## ***Bottom line***

The examples of local ordinances in this article are not exhaustive. You should track employment ordinances in the major cities and counties in which your company has employees to ensure compliance, and update your practices, forms, policies, and training in light of any applicable ordinances. We encourage you to consult with competent employment counsel to facilitate the process.

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