

An Overview of New 2016 Laws Affecting California Employers

By: CalChamber Employment Law Counsel

California enacted many new laws that will affect the day-to-day operations of California businesses in 2016.

Some of the new laws make important changes to existing state law. Other new laws make small changes to different parts of existing law or may only affect certain types of employers, such as employers with piece-rate workers.

Also, don't forget that the minimum wage increases on January 1, 2016, to \$10 per hour — this is not a new law (it was signed in 2013), but this is the last mandatory increase from that law.

Unless specified, all new legislation goes into effect on **January 1, 2016**.

This white paper identifies some of the noteworthy new laws from the California Legislature. For a full discussion of the new 2016 employment laws, CalChamber members can visit HRCalifornia Extra's [New Laws for 2016](#) page.

Leaves of Absence and Benefits

Several new laws affect leaves of absence.

Mandatory Paid Sick Leave Amendments

Last year, the Healthy Workplaces, Healthy Families Act was signed into law and required employers to begin providing the mandatory paid sick leave (PSL) benefit beginning July 1, 2015. But after the law was already in effect, the Legislature passed AB 304 which made several substantial amendments to the law. The amendments became effective on **July 13, 2015**.

Among other things, the amendments:

- Clarify who is a covered worker;
- Provide alternative accrual methods other than one hour for every 30 hours worked;
- Clarify protections for employers that already provided PSL or paid time off before January 1, 2015 (a grandfather clause); and
- Provide alternative methods for paying employees who use PSL.

For more details on this law, read CalChamber's white paper, [The Who, What, When and How of Mandatory Paid Sick Leave in California: New Amendments Effective July 13, 2015](#).

School Activities Leave

SB 579 expands the ability of employees to take protected time off from work for school or child care related activities. It allows an employee protected time off to find a school or a licensed child care provider and to enroll or re-enroll a child, and time off to address child care provider or school emergencies. SB 579 also expands the categories of employees eligible to take time off for a child. This law applies to employers with 25 or more employees.

Kin Care

SB 579 makes technical amendments to California's "kin care" law to conform to the mandatory PSL law. SB 579 allows employees to use kin care for the same purposes specified by the PSL law and defines "family member" under the kin care law the same as under PSL.

National Guard Leave and Protections

AB 583 expands the list of employees eligible for California's military leave protections, such as return rights and other job protections.

Unemployment Insurance and Electronic Reporting

AB 1245 requires electronic reporting for unemployment insurance reports submitted to the Employment Development Department. It also requires employers to remit contributions for unemployment insurance premiums by electronic funds transfer. The requirements will apply to employers with 10 or more employees beginning **January 1, 2017**, and to *all* employers beginning **January 1, 2018**.

State Disability Insurance Eligibility: Waiting Periods

SB 667 changes the eligibility waiting period requirements when an individual files a second disability claim for the same or related condition as his/her initial claim. SB 667 also extends the time between claims that will be considered one disability benefit period. This law is effective **July 1, 2016**.

Unemployment Insurance: Training Benefits

AB 1514 makes changes related to eligibility for unemployment insurance benefits during a period when the individual is taking specified training or retraining.

Discrimination and Retaliation Protections

Several new laws expand employee protections for 2016.

Gender Wage Equality

SB 358 (Fair Pay Act) revises Labor Code section 1197.5, which deals with gender pay inequality or disparity. Under existing California law, employers cannot pay an employee less than the rate paid to an opposite-sex employee in the same establishment for equal work on jobs that require equal skill, effort and responsibility, and could face a lawsuit for such disparity.

The Fair Pay Act revises and expands this prohibition. It eliminates the requirement that the pay difference be "within the same establishment" and eliminates use of the terms "equal work" for "equal skill, effort, and responsibility."

Instead, SB 358 prohibits an employer from paying any of its employees less than employees of the opposite sex for “substantially similar work, when viewed as a composite of skill, effort and responsibility.” In addition, the legislation places specific requirements on employers to affirmatively show that any wage differential is not unlawful but is instead based entirely and reasonably upon one or more of the acceptable listed factors, including seniority and merit systems or other bona fide factors coupled with a showing of “business necessity,” as defined.

The Fair Pay Act prohibits employers from terminating, discriminating or retaliating against an employee who exercises his/her rights under the Act or assists others in exercising their rights. Employers also can’t prohibit employees from disclosing their wages, discussing the wages of others or asking about another employee’s wages. The Act does not obligate anyone to disclose wages when asked.

It’s important to remember that the ability of employees to discuss wages is already protected by other existing state and federal laws, even though the Fair Pay Act also includes this same protection.

This law creates a private right of action for retaliation and discrimination.

Whistleblower and Anti-Retaliation Protections

AB 1509 expands whistleblower and anti-retaliation protections to prohibit employers from retaliating against an employee when his/her family member engages in whistleblowing or other described protected activity, such as complaining of wage theft or unsafe working conditions.

AB 1509 also expands joint employer liability by changing the definition of employer under these anti-retaliation laws to include “client employers” — a specific definition related to companies who contract for labor.

Reasonable Accommodation and Retaliation

AB 987 clarifies that an employer can’t retaliate or discriminate against an employee for requesting a reasonable accommodation for a disability or religion, regardless of whether the request was granted. The law clarifies that the mere act of making the request is protected conduct under the Fair Employment and Housing Act.

Immigration-Related Protections

AB 560 adds additional protection for child workers to clarify that their immigration status is not relevant to the issue of whether their employer violated the law or to what remedies are available to the worker.

State Contracts

SB 703 amends existing law to prohibit the state from entering into contracts for goods or services of \$100,000 or more with a contractor that discriminates on the basis of gender identity, such as being transgender, when providing benefits.

Wage and Hour

Several new laws will increase employers’ wage-and-hour obligations in 2016. Many of the new laws in the wage-and-hour arena deal with increasing penalties and expanding liability, instead of imposing significant new obligations on employers.

Private Attorneys General Act

AB 1506 amends the Private Attorneys General Act (PAGA) to allow employers a limited right to correct (or “cure”) two types of itemized wage statement violations before an employee may bring a civil action under PAGA. An employer will now be allowed to correct violations involving: (1) a failure to provide employees with an itemized wage statement that contains the inclusive dates of the pay period; or (2) a failure to provide employees with an itemized wage statement that contains the name and address of the legal entity.

This law was “urgency legislation” and became effective immediately when the governor signed it on **October 2, 2015**.

Piece Rate Workers

AB 1513 sets forth new rules for employers with piece-rate employees. The law requires employers to pay piece rate workers for rest and recovery periods and other non-productive time at specified minimum hourly rates, separate from the piece-rate compensation.

AB 1513 mandates that specific information, such as the total hours of compensable rest and recovery periods, must now be included on a piece-rate employee’s itemized wage statement (pay stub).

AB 1513 also contains a “safe harbor” provision for employers who, in the past, may not have properly paid piece-rate workers for rest and recovery periods or non-productive time and face liability. Employers who want to take advantage of the safe harbor provision will need to meet the statutory requirements by **December 15, 2016**.

Meal Periods Health Care Industry

SB 327 reaffirms that the Wage Orders which allow for a specific meal period waiver in the health care industry are still in effect. Employers in the health care industry can continue to allow employees to voluntarily waive one of their two meal periods, even when an employee’s shift exceeds 12 hours (Wage Orders 4 and 5).

This law was also urgency legislation and became effective immediately when signed on **October 5, 2015**.

Labor Commissioner Expanded Enforcement Powers

SB 588 makes several changes to the Labor Code and expands the Labor Commissioner’s ability to enforce laws.

In order to enforce a judgment for nonpayment of wages, SB 588 allows the Labor Commissioner to issue levies and liens on employer property and to issue “stop orders” — preventing the employer from continuing to conduct business in the state.

SB 588 also specifies that an individual acting on behalf of the employer can be personally liable for violating certain provisions of the Labor Code.

SB 588 further provides for joint and several liability for unpaid wages in the property-services and long-term care industries when judgments are not satisfied.

Labor Commissioner Enforcement of Local Laws

AB 970 allows the Labor Commissioner to now investigate and enforce local overtime and minimum wage laws, such as the local minimum wage ordinances enacted by many cities. AB 970 also gives the Labor Commissioner new authority to issue citations and penalties when employers fail to reimburse employees for employer-required expenses.

Wage Garnishment

SB 501 reduces the prohibited amount of weekly disposable earnings that may be garnished pursuant to a withholding order. This amendment is effective **July 1, 2016**.

Misclassification Amnesty for Motor Carrier Employers

AB 621 establishes the Motor Carrier Employer Amnesty Program for port transportation companies (also known as port drayage companies). The amnesty program allows motor carrier companies to avoid liability for misclassification of drivers as independent contractors if the companies voluntarily enter into settlement agreements with the Labor Commissioner by **January 1, 2017**.

Public Works and Prevailing Wages

A number of bills signed this year relate to public works and prevailing wages. Employers who provide services or construction work on public works projects for the government or public-sector entities must pay the prevailing wage, which is usually significantly higher than the minimum wage.

The bills include:

- AB 219
- AB 327
- AB 852

Hiring

Several new laws relate to hiring.

Unlawful Use of E-Verify

AB 622 prohibits employers from using the federal E-Verify system at a time or in a manner not required by federal law to check the employment authorization status of an existing employee or of an applicant who has not received an offer of employment.

Employers can still use E-Verify, in accordance with federal law, to check the employment authorization status of a person who has been offered employment.

AB 622 also requires employers who use E-Verify to comply with specific employee notification requirements when they receive notice from a federal agency that the submitted E-Verify information does not match federal records.

There is a penalty of \$10,000 for each violation.

Grocery Store Workers: Retention

AB 359 extends job protections to grocery store workers when a grocery store changes ownership — requiring the successor owner to retain grocery workers employed by the previous owner for a specific period of time. AB 897 defines a grocery establishment for purposes of this law.

Professional Cheerleaders Are Employees

AB 202 requires that California-based professional sports teams classify cheerleaders as employees, not independent contractors, when the cheerleaders are used by the team during its exhibitions, events or games.

Workers' Compensation

Several bills relating to workers' compensation were signed into law in 2015:

- AB 1124: Requires the Division of Workers' Compensation to establish a formulary for prescription medications in the workers' compensation system by **July 1, 2017**.
- SB 623: Ensures that all injured workers receive benefits by clarifying that workers cannot be denied benefits based on citizenship or immigration status.
- AB 438: Requires specified workers' compensation forms, notices and fact sheets to be made available in additional languages by **January 1, 2018**.
- SB 542: Makes clarifications to medical provider network laws, including requirements about the information a medical provider network must post on its website.
- SB 560: Allows the Contractors State License Board to investigate and enforce the obligation of licensees to secure valid and current workers' compensation insurance.

The Division of Workers' Compensation also recently finalized regulations revising certain benefit notices for **January 1, 2016**. Revisions were made to:

- The *Claim Form and Notice of Potential Eligibility* (DWC 1).
- The workers' compensation "Notice to Employees" — a required posting for California. CalChamber's [2016 California and Federal Employment Notices Poster](#) and [2016 Required Notices Kit](#) will contain the updated workers' compensation notice.

Miscellaneous

Other new laws make changes that may affect specific types of California business relationships.

Franchisor/Franchisees

AB 525 changes the definition of when a franchise agreement can be terminated for good cause and also makes other changes regarding obligations and rights when a franchise agreement is not renewed.

Ride Sharing Services

AB 1422 requires ride-sharing services, such as Uber and Lyft, to participate in the state Department of Motor Vehicles' "pull-notice system" to regularly check the driving records of participating drivers, regardless of whether the driver is an employee or an independent contractor.

The pull-notice system shows accidents, license revocations/suspensions, DUIs and other actions taken against a license holder.

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