



## News & Publications

### New Employment Laws and Requirements for 2014

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*CCN Alert*

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After an active legislative session, employers will contend with a large number of new employment laws that will go into effect January 1, 2014. The following is a partial list of new laws that will affect many employers' day-to-day operations and may require review of employer policies and procedures to ensure continued compliance.

**Expanded Whistleblower Protections.** California Labor Code section 1102.5 prohibits an employer from taking action to prevent an employee from disclosing violations of state or federal statutes to a government or law enforcement agency and prohibits retaliation against employees for making disclosures. SB 496 expands these "whistleblower" protections to include disclosures of violations or noncompliance with local, state, or federal rules or regulations.

Importantly, SB 496 further protects employees who disclose or may disclose "to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance." This includes prohibiting retaliation against an employee who the employer believes may disclose such information. Under SB 496, internal complaints by employees to their employers may be protected, including complaints about terms and conditions of employment governed by local and state regulations. Employers must be cautious in responding to complaints to avoid claims that the employer has violated these whistleblower

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protections.

**Premium Wages for Failure to Provide Recovery Periods.** SB 435 extends the premium wage provisions of Labor Code section 226.7 to require one hour of pay by an employer who fails to provide an employee a recovery period required by the Occupational Safety and Health Standards Board or the Division of Occupational Safety and Health. Under Cal-OSHA's Heat Illness Prevention Program, employers must meet requirements intended to deter heat illness for employees in outside places of employment, including providing and encouraging employees to take breaks of at least five minutes whenever the employee feels the need to do so. Given this indefinite compliance standard, the imposition of the premium wage obligation for missed recovery periods can be expected to give rise to employee claims similar to the significant meal and rest period claims and class actions that have been brought previously under section 226.7.

**Amendments to California's Fair Employment and Housing Act (FEHA).** The FEHA prohibits discrimination and harassment of employees based on various protected categories. AB 556 adds "military and veteran status" to the list of protected classifications, expanding the protected service categories to include members or veterans of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

SB 292 further amends the FEHA to clarify that harassment because of sex (including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions) need not be motivated by sexual desire.

**Expanded Protections for Employees Exercising Rights Under the Labor Code.** AB 263 amends Labor Code section 98.6, which prohibits discharge of or discrimination against an employee for exercising rights under the Labor Code (such as complaining of unpaid wages), to also prohibit employers from retaliating or taking an adverse employment action against such employees. Importantly, AB 263 imposes a \$10,000 civil penalty per violation, expanding protections to employees who exercise their rights, including making written or oral complaints about wages owed.

**Prohibition of Unfair Immigration-Related Practices.** AB 263 makes it unlawful for an employer to engage in an "unfair immigration-related practice," such as threatening to contact immigration authorities or filing a false police report, in retaliation for a person engaging in protected activity under the Labor Code. AB 263 permits a court to suspend certain business licenses held by employers committing unfair immigration-related practices and authorizes a civil action against such employers.

Similarly, SB 666 makes it an adverse employment action for an employer to threaten to report the immigration status of a past, present or prospective employee or their family to authorities because the employee exercises various rights under California law. SB 666 further authorizes the suspension by the Labor Commissioner or a court of certain business licenses of employers committing such adverse actions.

**Crime Victims Leave.** Labor Code section 230 protects employees who are victims of domestic violence and sexual assault from discrimination and retaliation for taking time off to participate in legal proceedings such as those to obtain a restraining order. SB 400 extends these protections to victims of stalking. SB 400 further protects against



discharge, discrimination and retaliation because of an employee's status as a victim of domestic violence, sexual assault or stalking. SB 400 imposes an obligation to provide employees reasonable accommodations (such as implementing safety measures and work reassignments) and to engage in an interactive process like that required for accommodations of employees with disabilities.

SB 288 adds section 230.5 to the Labor Code prohibiting termination, discrimination or retaliation against employees who are victims of additional, specified crimes for taking time off to appear in court and participating in other proceedings. Employees must provide reasonable notice of the need for time off or provide certification in a specified form in cases of an unscheduled absence. Violations of section 230.5 entitle an employee to reinstatement and reimbursement of lost wages and benefits.

**Increased Employer Exposure and Liability in Labor Commissioner Actions.** The Labor Commissioner is currently authorized to hear and issue orders, decisions and awards on employee complaints for payment of wages and other employment issues. AB 1386 authorizes a lien on employer real property upon the Labor Commissioner's order, decision or award becoming final and authorizes recordation of the lien with the county recorder.

In actions for nonpayment of minimum wages, AB 442 authorizes the collection of liquidated damages in the amount of unpaid wages under citations issued by the Labor Commissioner in addition to recovery of wages and penalties. Together, AB 1386 and AB 442 increase the amount of, and ability to collect on, wage claim orders.

**Limits on Employer Right to Recover Attorney's Fees in Wage Litigation.** In an action for nonpayment of wages (except for those based on nonpayment of minimum wages), fringe benefits, and health and welfare and pension contributions, Labor Code section 218.5 authorizes an award of attorney's fees to the prevailing party. SB 462 amends section 218.5 to allow an employer to obtain an attorney fee award only if the employee's action was brought in bad faith. This further reduces potential disincentives to employees in pursuing tenuous wage claims.

**Paid Family Leave Benefits.** Beginning on July 1, 2014, SB 770 expands the scope of Paid Family Leave benefits provided by the State to include payment for time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law.

**San Francisco Family-Friendly Workplace Ordinance.** The City and County of San Francisco continue to impose unique requirements on employers with adoption of the Family-Friendly Workplace Ordinance (FFWO). Employers with twenty or more employees must consider, and respond in writing to, requests for "flexible or predictable working arrangements to assist with care giving responsibilities" from eligible employees, including part-time employees. Employers can deny a request for bona fide business reasons but cannot retaliate against employees for exercising their FFWO rights. Employers are required to post a notice of employees' FFWO rights.

**Reminder – Increase in Minimum Wage.** AB 10 increases the minimum wage from \$8.00 per hour to \$9.00 per hour on July 1, 2014. An additional increase to \$10.00 per hour is effective on and after January 1, 2016.



If you have any questions regarding any of the foregoing new laws or need assistance with any labor or employee relations matter, please contact an attorney in our Labor and Employment Group.

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