

An Overview of New 2015 Laws Affecting California Employers

By: CalChamber Employment Law Counsel

California enacted many new laws that will affect the day-to-day operations, practices and policies of California businesses in 2015.

Some of the new laws for 2015, such as mandatory paid sick leave, make significant changes to California's legal landscape. Other new laws make changes to different parts of existing law or may only affect employers in specified industries, such as farming.

Unless specified, all new legislation goes into effect on **January 1, 2015**.

This white paper identifies some of the noteworthy new laws from the California Legislature. For a full discussion of the new 2015 employment laws, CalChamber members can visit HRCalifornia Extra's [New Laws for 2015](#) page.

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CalChamber's employment law experts will cover the new state laws in more detail on HRCalifornia and in the [2015 California Labor Law Digest](#), and will make the necessary updates to all CalChamber products.

Attend one of CalChamber's [2015 Employment Law Updates](#) live seminars for a comprehensive review of recent updates to California and federal employment laws. These popular seminars will be held throughout the state in January. Attendees also receive a handout of important cases and new laws.

Leaves of Absence

The biggest news in the leaves of absence arena is mandatory paid sick leave.

Mandatory Paid Sick Leave

One of the most game-changing pieces of employment-related legislation we have seen for years is mandatory paid sick leave. AB 1522, the Healthy Workplaces, Healthy Families Act of 2014, requires employers to provide paid sick leave to any employee who worked in California for 30 days at an accrual rate of one hour for every 30 hours worked.

Employers are allowed to limit an employee's use of paid sick leave to 24 hours or three days in each year of employment and may put a maximum cap on total accrual of 48 hours or six days. The effective date for employers to begin providing the paid sick leave benefit is **July 1, 2015**.

The law contains many different nuances and is not a simple piece of legislation. AB 1522 adds eight new sections to the Labor Code and amends a ninth section. It contains detailed recordkeeping and notice requirements, including a new poster requirement. The law also contains penalties for noncompliance.

For more details on this law, CalChamber members can read the October 2 edition of [HRCalifornia Extra](#).

Time Off for Emergency Duty: Expanded Category

AB 2536 adds new personnel to the list of employees eligible for protected time off for emergency duty.

AB 2536 also requires an employee who is a health care provider, as defined, to notify his/her employer when he/she is designated as emergency rescue personnel and also to notify the employer at the time that the employee learns that he/she will be deployed for emergency duty.

Discrimination, Harassment and Retaliation Protections

Several new laws expand employee protections for 2015.

Protections for Unpaid Interns and Volunteers

AB 1443:

- Adds unpaid interns and volunteers to the list of individuals protected from harassment under the Fair Employment and Housing Act (FEHA);
- Prohibits employers from discriminating against individuals in an unpaid internship or another limited duration program to provide unpaid work experience for that person; and
- Extends religious belief protections and religious accommodation requirements to anyone in an apprenticeship training program, an unpaid internship or any other program to provide unpaid experience for a person in the workplace or industry.

Nondiscrimination: Driver's Licenses for Undocumented Persons

AB 1660 makes it a violation of FEHA for an employer to discriminate against an individual because he/she holds or presents a driver's license issued to undocumented persons who can submit satisfactory proof of identity and California residency. Such discriminatory actions will constitute national origin discrimination under FEHA. AB 1660 amends both the Vehicle Code and the Government Code.

These driver's licenses are often referred to as "AB 60 driver's licenses," after the name of the bill passed last year. AB 60 driver's licenses are scheduled to start being issued on January 1, 2015.

AB 1660 clarifies that actions taken by an employer that are required to comply with federal I-9 verification requirements under the Immigration and Nationality Act (INA) do not violate California law.

AB 1660 also provides that it is a violation of FEHA for an employer to require a person to present a driver's license, unless possessing a driver's license is (1) required by law; or (2) required by the employer and the employer's requirement is otherwise permitted by law.

AB 1660 further requires any driver's license information obtained by an employer to be treated as private and confidential.

Immigration-Related Protections

AB 2751 expands the definition of an unfair immigration-related practice to include threatening to file or filing a false report or complaint with *any state or federal agency*. Current law extended the protection only to reports filed with the police.

AB 2751 also clarifies that an employer can't discriminate against or retaliate against an employee who updates his/her personal information "based on a lawful change of name, [S]ocial [S]ecurity number, or federal employment authorization document."

Prohibition of Discrimination Against Public Assistance Recipients: Public Reports

AB 1792 prohibits discrimination and retaliation against employees receiving public assistance; which is defined as meaning the Medi-Cal program.

AB 1792 also requires state agencies to prepare an annual list of the top 500 employers with the most number of employees enrolled in a public assistance program. The reports will be made public and will be prepared starting in **January 2016**.

"Employer" is defined by the law as an individual or organization with more than 100 employees that are beneficiaries of the Medi-Cal program.

Harassment Prevention Training: Prevention of Abusive Conduct

AB 2053 requires employers that are subject to the mandatory sexual harassment prevention training requirement for supervisors to include a component on the prevention of "abusive conduct," beginning January 1, 2015. "Abusive conduct" is specifically defined by the new law.

This new law does not mean that an employee can sue for abusive conduct in the workplace unless, of course, the conduct becomes discrimination or harassment against a protected class. The law merely requires training on prevention of abusive conduct.

Harassment Prevention Training: Farm Labor Contractors

SB 1087 imposes specific sexual harassment prevention training requirements on farm labor contractors, including a yearly training requirement for supervisory employees and training for nonsupervisory employees at the time of hire and every two years thereafter. The required content for the training is not as involved as AB 1825 training.

The law also places restrictions on the ability to grant a license to a farm labor contractor who has engaged in sexual harassment, changes the exam requirements and increases licensing fees, bonding requirements and penalties.

Wage and Hour

Several new laws will increase employers' wage-and-hour obligations in 2015. 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.

Increased Liability for Employers That Contract for Labor

AB 1897 imposes liability on employers who contract for labor. The purpose of the law is to hold companies accountable for wage-and-hour violations when they use staffing agencies or other labor contractors to supply workers.

In brief, if a labor contractor fails to pay its workers properly or fails to provide workers' compensation coverage for those employees, the "client employer" can now be held legally responsible and liable. The law contains specific definitions and exclusions.

For more information, review the [Labor Contractor \(AB 1897\) — Fact Sheet](#).

Rest and Recovery Periods

SB 1360 confirms that recovery periods that are taken pursuant to heat illness regulations are paid breaks and count as hours worked. SB 1360 reiterates what is already in existing law in this area and was passed simply to clear up any confusion employers may have had.

Waiting Time Penalties

The Labor Commissioner can cite an employer who pays less than the minimum wage; the citation can include a civil penalty, restitution and liquidated damages (Labor Code section 1197.1). AB 1723 authorizes the Labor Commissioner to also include in this citation process any applicable penalties for an employer's willful failure to timely pay wages to a resigned or discharged employee, also called "waiting time" penalties. The law does not create new penalties; just a new way for the Labor Commissioner to enforce existing penalties.

Another new law, AB 2743, provides a waiting time penalty if unionized theatrical and concert venue employers violate any agreed upon timeframe for payment of final wages contained in a collective bargaining agreement.

Protections for Complaints Under the Labor Code

AB 2751 clarifies that the \$10,000 penalty against an employer who discriminates or retaliates against an employee who complains of Labor Code violations will be awarded to the employee or employees who "suffered the violation." The bill amends Labor Code section 98.6.

Timeframe for Recovery of Wages: Liquidated Damages

AB 2074 states that a lawsuit seeking to recover liquidated damages for minimum wage violations can be filed any time before the expiration of the statute of limitations that applies to the underlying wage claim, which is three years. Some recent court cases had held that liquidated damages claims had to be filed within one year.

Child Labor Law Violations: Increased Remedies

AB 2288, the Child Labor Protection Act of 2014, provides additional penalties for violations of California laws regarding employment of minors, including a penalty of \$25,000 to \$50,000 for “Class A” violations involving minors 12 years of age or younger.

In addition, the statute of limitations for claims that arise from violations of employment laws is tolled, in other words, delayed or suspended, until the minor is 18 years of age.

Foreign Labor Contractors

SB 477 is noteworthy for employers that use foreign labor contractors to recruit foreign workers for California assignments. The new law, in part, requires foreign labor contractors to meet registration, licensing and bonding requirements by **July 1, 2016**.

Employers are prohibited from using non-registered foreign labor contractors to supply workers in California. SB 477 also imposes disclosure requirements and other obligations on foreign labor contractors. There are penalties for noncompliance and joint liability for employers who use non-registered foreign labor contractors and potential for civil action.

Prevailing Wages

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

The bills include:

- AB 26;
- AB 1870;
- AB 1939;
- AB 2272;
- AB 2744; and
- SB 266.

One notable bill, AB 1939, allows a contractor to bring an action against “hiring parties” to recover any increased costs (including labor costs, penalties and legal fees) incurred because of a determination that the work performed on the project was a covered public work and is subject to prevailing wage laws.

Another notable bill, SB 266, responds to concerns regarding delays in determining whether a project is a public works project for prevailing wage purposes.

Background Checks

Several new laws relate to criminal background checks.

Criminal History Information in Public Contracts

AB 1650 requires contractors who bid on state contracts involving on-site construction-related services to certify that they will not ask applicants for on-site construction-related jobs to disclose information concerning criminal history at the time of an initial employment application.

Services to Minors

AB 1852 requires a business that provides specified services to minors to provide a written notice to the parent or guardian of the minor receiving those services. The written notice should address the business's policies relating to employee criminal background checks.

Workplace Safety

Several new laws pertain to workplace safety.

Penalties for Failure to Abate Safety Hazards

Cal/OSHA can require an employer to abate (fix) serious workplace safety violations and also to issue civil penalties. An employer can appeal the citation.

AB 1634, in effect, prohibits the state Occupational Safety and Health Appeals Board from modifying civil penalties for abatement or credit for abatement unless the employer has fixed the violation.

In cases of serious, repeat serious or willful serious violations, AB 1634 will generally prohibit a stay or suspension of an abatement requirement while an appeal or petition for reconsideration is pending, unless the employer can demonstrate that a stay or suspension will not adversely affect the health and safety of employees.

Email for Workplace Safety Reports

AB 326 allows employers to email their reports of a work-related serious injury, illness or death to the Division of Occupational Safety and Health. Previously, Labor Code section 6409.1 required an immediate report by telephone or telegraph. The reference to telegraph is removed and replaced with email.

Workplace Violence Prevention Plans: Hospitals

SB 1299 requires Cal/OSHA to adopt standards by **January 1, 2016**, that require specified types of hospitals, including general acute care hospitals or acute psychiatric hospitals, to adopt workplace violence prevention plans as part of the hospitals' injury and illness prevention plans. The intent is to protect health care workers and other facility personnel from aggressive and violent behavior.

Workers' Compensation

Several bills relating to workers' compensation were signed into law in 2014:

- AB 1035 relates to collection of death benefits for the death of persons in specified groups, including firefighters and peace officers.
- AB 1746 requires expedited hearings in workers' compensation cases involving illegally uninsured employers.
- AB 2732 makes cleanup changes to workers' compensation reforms that occurred in 2012, including changing information on the Independent Medical Review request form that must be provided to the employee. The form can also now be up to two pages instead of only one page.

Unemployment Insurance (UI)

Several new laws relate to unemployment insurance.

Eligibility: Education and Training Programs

AB 1556 clarifies and revises unemployment eligibility standards for unemployed individuals enrolled in training or education programs. The law also extends a grace period for workers seeking to continue their UI claims. In addition, the law requires translation of UI benefit information into additional languages and requires the Employment Development Department's director to periodically review policies and practices.

Physician Assistants

SB 1083 will allow physician assistants to begin certifying an employee's disability for UI purposes. The law takes effect **January 1, 2017**. The law will expand the definition of practitioners under the UI code to include physician assistants who have performed physical exams under the supervision of a physician and surgeon.

UI Appeal Process

SB 1314 extends deadlines for requesting reconsideration of a ruling determining eligibility for unemployment compensation benefits and also for initiating appeals to the California Unemployment Insurance Appeals Board — from 20 days to 30 days — beginning **July 1, 2015**.

Health Care

SB 1034 deletes certain provisions of California law related to waiting period limitations for health care coverage and clarifies that employer-imposed waiting periods are governed by the 90-day period authorized under the federal Patient Protection and Affordable Care Act (ACA).

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