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Summary of Key New California Laws for 2017: What Employers Should Know

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Governor Brown has this year signed several new laws impacting California employers, some of which have already gone into effect and others that will be effective or operative in 2017 or later. A summary of key new laws follows. The effective date of the particular new law is indicated in the heading of the Assembly Bill (AB) and / or Senate Bill (SB).¹ The list below is in numerical order by the AB or SB.

ABX2-7 – Smoking in the Workplace (Effective June 9, 2016)

By way of background, California law already prohibited smoking of tobacco products inside an enclosed at a place of employment for certain employers. This Bill amends Labor Code Section 6404.5 and expands the prohibition on smoking of tobacco products in all enclosed places of employment to all employers of any size, including a place of employment where the owner-operator is the only employee (i.e., owner-operated business). “‘Enclosed space’ includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building.” There are, however, certain exemptions. “Place of employment” does not include: (1) 20% of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment; (2) Retail or wholesale tobacco shops and private smokers’ lounges; (3) cabs of motortrucks; (4) theatrical production sites, if smoking is an integral part of the story in the theatrical production; (5) medical research or treatment sites, if smoking is integral to the research and treatment being conducted; (6) private residences, except for licensed family day care homes; (7) patient smoking areas in long-term health care facilities.

A violation this law is punishable by a fine not to exceed \$100 for a first violation, \$200 for a second violation within one year, and \$500 for a third and for each subsequent violation within one year.

AB 908 – Paid Family Leave (Operative January 1, 2018)

Paid Family Leave (PFL) provides short-term benefits to eligible employees who lose wages when they need to take time off work to care for a seriously ill child, parent,

parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner, or to bond with a new child entering the family by birth, adoption, or foster care placement.

This Bill revises the formula for determining benefits available to those eligible employees “for periods of disability commencing after January 1, 2018, but before January 1, 2022.” This Bill provides “a weekly benefit amount minimum of \$50 and increases the wage replacement rate to specified percentages, but not to exceed the maximum workers’ compensation temporary disability indemnity weekly benefit amount established by the Department of Industrial Relations pursuant to existing law.” Further, this Bill removes the existing seven-day waiting period for paid family leave benefits.²

AB 1066 – Wages, Hours, and Working Conditions for Agricultural Workers (Effective January 1, 2017)

Currently, agricultural workers who work more than 10 hours per day are to receive overtime pay at one-and-half times the regular rate of pay. This Bill, known as the Phase-In Overtime for Agricultural Workers Act of 2016, amends Labor Code Section 554³ and provides that a gradual phase-in of overtime to agricultural workers. For employers with 26 or more employees,⁴ beginning on January 1, 2019 and continuing until January 1, 2022, the phase-in provides for a reduction of half-hour per day per year until reaching 8 hours (or 40 hours per week). As such, beginning on January 1, 2019, agricultural workers working more than 9 ½ hours per day or in excess of 55 hours in any one workweek are to receive overtime pay at one-and-half times their regular rate of pay. And so on until January 1, 2022, agricultural workers working more than 8 hours per day or in excess of 40 hours in any one workweek are to receive overtime pay at one-and-half times their regular rate of pay. Further, beginning on January 1, 2022, agricultural workers working more than 12 hours per day are to receive overtime pay at twice their regular rate of pay. Finally, this Bill authorizes California to delay the implementation of the foregoing phase-in schedule if the governor also suspends the implementation of the scheduled increase in the California minimum wage.

¹ As a reminder, the minimum wage in California is increasing to \$10.50 per hour on January 1, 2017, for employers with 26 or more employees based on previous legislation signed by Governor Brown in 2015. The minimum wage for employers with 25 or fewer employees will remain at \$10.00 per hour for 2017. Also, please note that various cities and local governments in California have enacted minimum wage ordinances that exceed the state minimum wage.

² This Bill impacts Sections 2655, 3303 and 2655.1 of the Unemployment Insurance Code.

³ This Bill also adds Chapter 6 (commencing with Section 857) to Part 2 of Division 2 of, the Labor Code, relating to employment.

⁴ For employers with 25 or fewer employees, the phase-in schedule begins on January 1, 2022, through January 1, 2025.

AB 1676 & SB 1063 – Wage Discrimination and Application to Race and Ethnicity (Effective January 1, 2017)

Under the Fair Pay Act, which went into effect on January 1, 2016, existing law generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. The Fair Pay Act provides for exceptions such as, the wage differential is based upon one or more of the following factors: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; (d) a bona fide factor other than sex, such as education, training, or experience.

AB 1676 amends the Fair Pay Act (Labor Code Section 1197.5) to provide that an employee's prior salary cannot, by itself, justify any disparity in compensation under the bona fide factors above.

SB 1063 amends Labor Code Sections 1197.5 and 1199.5 and expands the requirements of the Fair Pay Act to include employees' race or ethnicity, and not just gender.

AB 1732 – Single-User Restrooms (Effective March 1, 2017)

Commencing on March 1, 2017, this Bill requires all single-user toilet facilities in any business establishment, place of public accommodation, or government agency to be identified as all-gender toilet facilities. This Bill would authorize inspectors, building officials, or other local officials responsible for code enforcement to inspect for compliance with these provisions during any inspection.⁵

AB 1843 – Criminal History in Applications for Employment (Effective January 1, 2017)

In addition to existing laws that proscribe what an employer can or cannot ask applicants about their criminal history,⁶ this Bill amends Labor Code Section 432.7 and prohibits employers from asking applicants to disclose, or from utilizing as a factor in determining any condition of employment, information concerning or related to "an arrest, detention, process, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law."

For purposes of this Bill, "conviction" does not include "any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court law." Further, this Bill contains additional restrictions and rights for employers of health care facilities.

⁵ This Bill adds Article 5 (commencing with Section 118600) to Chapter 2 of Part 15 of Division 104 of the Health and Safety Code, relating to restrooms.

⁶ Under existing laws, an employer cannot ask an applicant about an "arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law."

AB 2068 – Talent Services (Effective January 1, 2017)

This Bill amends Labor Code Sections 1703 and 1703.4 and provides additional protections to artists for their information or photographs to any form of communication such as "an online service, online application, or mobile application of the talent service or one that the talent service has the authority to design or alter." Further, this Bill requires, among other things: (1) the talent service to act, within days 10 days, on requests of the artist made by any form of electronic communication, including text messages, to remove information or photographs from the talent service's website, online service, online application, or mobile application (collectively electronic medium") or an electronic medium that the talent service has the authority to design or alter; and (2) that the artist may cancel the contract within 10 business days from the above date of the contract or the date on which the artist commences utilizing the services under the contract, whichever is longer.

AB 2337 – Employment Protections for Victims of Domestic Violence, Sexual Assault, or Stalking (Effective July 1, 2017)

This Bill requires that by July 1, 2017, employers with 25 or more employees provide specific information in writing to new employees upon hire and to other employees upon request of their rights to take leave under Labor Code Section 230.1 (relating to victims of domestic violence, sexual assault, or stalking). This Bill also requires that, on or before July 1, 2017, the Labor Commissioner develops a form that employers may elect to use to comply with these provisions and to post it on the Labor Commissioner's website. Employers are not required to comply with the notice of rights requirement until the Labor Commissioner posts such form.

AB 2535 – Itemized Wage Statements (Effective January 1, 2017)

Existing law requires that employers provide their employees an accurate itemized statement in writing containing specified information as listed in Labor Code Section 226. This Bill clarifies that Section 226 does not require employers to include in itemized wage statements the total number of work hours by an *exempt* employee. An exempt employee is an employee who is exempt from the payment of minimum wage and overtime under the California Labor Code or other applicable Wage Orders promulgated by the Industrial Welfare Commission (a commission within the within the California Department of Industrial Relations). Employers must continue to include the total hours worked by non-exempt employees in the itemized wage statements for each pay period.

AB 2899 – Minimum Wage Violations (Effective January 1, 2017)

This Bill amends Labor Code Section 1197.1 and requires that, prior to an employer appealing a citation by the Labor Commissioner against the employer for violation of wage and hour laws, the employer post a bond with the Labor Commissioner in an amount equal to the unpaid

wages assessed under the Labor Commissioner’s citation, excluding penalties. The bond must be in favor of the employee and will be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.

SB 1001 – Immigration Related Unfair Practices (Effective January 1, 2017)

Employers who are in the process of verifying that workers have the necessary documentation to work in the United States are prohibited from requesting of such workers more documents or different documents than are required under federal law, to refuse to honor documents tendered that on their face reasonably appear to be genuine, to refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work, or to reinvestigate or reverify an incumbent employee’s authorization to work. Under this Bill, which adds Labor Code Section 1019.1, applicants and employees may file a complaint with the Division of Labor Standards Enforcement. Any person who is deemed in violation of this new law is subject to a penalty imposed by the Labor Commissioner of up to \$10,000, among other relief available.

SB 1167 – Heat Regulations for Indoor Workers (Effective January 1, 2019)

By way of background, the Division of Occupational Safety and Health (“Division”) investigates complaints that a workplace is not safe and may issue orders necessary to ensure employee safety. Under existing law, certain violations of that act or a standard, order, or special order authorized by the act are a crime. Under existing law, the Division has adopted regulations establishing a heat illness prevention standard for outdoor workers.

This Bill, which adds Labor Code Section 6720, requires that, by January 1, 2019, the Division is propose to the Occupational Safety and Health Standards Board (“Board”) for the Board’s review and adoption, a heat illness and injury prevention standard applicable to workers working in indoor places of employment. “The standard shall be based on environmental temperatures, work activity levels, and other factors.” Further, under this Bill, the Division is not precluded from proposing, or the Board from adopting, a standard that limits the application of high heat provisions to certain industry sectors.

SB 1241 – Choice of Law and Forum in Employment Contracts (Effective January 1, 2017)

This Bill adds Labor Code Section 925 and prohibits employers from requiring California-based employees to enter into agreements (including arbitration agreements) requiring them to: (1) adjudicate claims arising in California in a non-California forum; or (2) litigate their claims under the law of another jurisdiction, unless the employee was represented by counsel. Any provision of a contract that violates this new law is voidable by the employee, any dispute arising thereunder shall be adjudicated in California under California law and the employee is entitled to recover reasonable attorneys’ fees. [Click here for a more detailed discussion of this Bill.](#)

As a result of the foregoing new laws, employers should consult with legal counsel to ensure their policies are compliant and their employee handbooks are up to date.

Labor and Employment Team

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