
Labor Law Newsletter

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*Hayes &
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NEW LAWS FOR 2015 THAT BENEFIT CALIFORNIA EMPLOYEES

In 2015 new legislation will take effect that benefit California employees. Twenty-one (21) new bills were signed into law by Governor Jerry Brown this Fall, which include the Healthy Workplaces, Healthy Families Act of 2014, which requires employers to pay employees for three days (24 hours) of sick leave per year; limits on arbitration agreements; placing joint liability between labor contractors and employers; expansion of workplace harassment training; and monetary sanctions for frivolous litigation tactics. These new laws continue the trend of increasing the responsibilities of employers and expanding workers' rights in California.

Paid Sick Leave

The Healthy Workplaces, Healthy Families Act of 2014 (AB 1522), which takes effect on July 1, 2015, adds new sections (245-249) to the California Labor Code that requires employers to pay employees for three days (24 hours) of sick leave per year, making California the second state to mandate paid sick leave. Most employees who work at least 30 days per year, including part-time and seasonal employees, are entitled to accrue sick pay at no

less than one (1) hour for every thirty (30) hours worked and are entitled to use sick pay beginning on their 90th day of employment. Employers can limit the use of sick leave to three days per year, but must meet certain specific posting, notice, and recordkeeping requirements that will be enforced by the California Labor Commissioner. Paid sick leave can be used by employees for their own preventive care, diagnosis, or treatment, or that of a family member; or after falling victim to domestic violence or sexual assault.

The pay rate during sick leave must be the employee's normal rate during their regular hours. Employers must allow employees to carry over at least three days of sick leave from one year to the next, but can limit the annual accrual of paid sick leave to six days (48 hours), unless the full amount of sick leave is available to employees at the beginning of each year.

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Paid Sick Leave

Employers are not required to pay out unused sick days upon termination of employees. Paid sick leave will not be required for employees already covered by collective bargaining agreements that expressly provide for wages, hours of work, and working conditions; construction industry employees covered by valid collective bargaining agreements that expressly waive the rights of AB 1522; providers of in-home support specified in the California Welfare and Institutions Code; and certain airline industry employees. Employers must: inform new employees at the time of hire of their paid leave rights; provide each employee with a notice of the amount of sick leave available on regular paydays; display a poster informing employees of paid sick leave rights; and retain records documenting hours worked and sick leave for at least three years. Employees must provide prior notice of sick leave when reasonable; if not, the employee must provide notice for the need for sick leave as soon as possible.

Employers who already offer paid sick leave do not need to provide additional paid sick days as long the employer's policy meets the requirements of AB 1522. In the event the Labor Commissioner finds that the employer has violated the above requirements, the Commissioner may order reinstatement, back pay, and payment of sick days unlawfully held, but no more than \$4,000 in sum.



Additional Protections for Workers Signed Into Law

Wait Time Wages (AB 1723) amends Labor Code Section 1197.1, which lists statutory penalties against employers who do not pay wages to resigned or discharged employees. In addition to allowing employees to recover civil penalties, restitution of wages, and liquidated damages through a hearing before the Labor Commissioner or civil action, AB 1723 authorizes waiting time penalties for Labor Commissioner citations as well.



Anti-Bullying Law (AB 2053) expands on AB 1825 by requiring already existing sexual harassment training that is required of employers with 50 or more employees to include training on abusive conduct.

OSHA Penalties (AB 326) places a \$5,000 penalty on employers who fail to immediately report by phone or email a severe injury, illness, or death to the Division of Occupational Safety and Health. Other injuries must be reported within five (5) days if they require more than first aid or

result in loss of time beyond the date of injury or illness.

Volunteer Rights (AB 1443) is a bill that amends the Fair Employment and Housing Act to extend the protections of harassment and discrimination laws to unpaid interns and volunteers. The bill makes volunteers and unpaid interns part of the same legal classification as paid employees, protecting them from discrimination based on race, religion, disability, etc.; prohibits sexual harassment; and gives them the same religious belief accommodations as paid employees.

Driver's Licenses for Undocumented Workers (AB 1660) prohibits discrimination based on an individual's driver's license indicating he or she is undocumented. In 2014, AB 60 allowed the Department of Motor Vehicles to issue special driver's licenses to undocumented persons. The legislation prohibits discrimination based on presenting such a driver's license and prohibits an employer from requiring a driver's license unless it is required of the employer and permitted by law.

Employer Liability (AB 1897) expands liability to employers with labor contractors for the payment of wages, failure to obtain workers' compensation coverage, and all legal liabilities required under workplace safety provisions. Laws already in place prevent entities from entering into contracts for labor or services if the entity knows, or should know, that the contractor does not have sufficient funds for the contractor to meet labor laws and regulations. The legislation prohibits waiving the provisions of AB 1897, but does not prohibit employers and contractors from seeking lawful remedies against the other party.

Public Assistance Discrimination (AB 1792) requires the Department of Finance to post on its website a list of employers with at least 100 employees who are enrolled in the Medi-Cal program. The bill also creates Government Code Section 13084, which prohibits employers from: discriminating or retaliating against an employee that is enrolled in a public assistance program; refusing to hire a person who receives public benefits; or disclosing the identities of persons who receive public assistance unless permitted by law. Government Code Section 13084 will expire on January 1, 2020.

Rescue Personnel Leave (AB 2536) expands on the Labor Code Section 230.3 definition of emergency rescue personnel, which prohibits employers from discharging or discriminating against an employee who takes time off to perform emergency duties as a volunteer firefighter, emergency rescue person, or reserve peace officer, to include an officer, employee, or member of a disaster medical response entity. The law also requires any employee who is licensed or certified under the Business and Professions Code, Osteopathic Initiative Act, or Chiropractic Initiative Act to be designated as emergency rescue personnel. The employee must notify his or her employer at the time of designation.



Foreign Labor Contractors (SB 477) now defines a Foreign Labor Contractor (“FLC”) as a person who performs foreign labor contracting activity and requires FLCs to register with the California Labor Commissioner. The seven (7) new amendments add conditions for registering with the Labor Commissioner including: payment of fees; a prohibition on agreements with unregistered FLCs; a requirement that FLCs obtain and disclose certain information about the foreign workers; and a prohibition on FLCs assessing fees or costs to the foreign workers for foreign labor contracting activities. The law also authorizes recovery of damages for any violations.

Fair Chance Employment Act (AB 1650) prohibits employers from inquiring about an applicant’s criminal conviction history on the initial employment application. Specifically, the legislation prohibits contractors who bid on state-funded construction related jobs from disclosing any information on an applicant’s criminal conviction history. The bill includes exceptions for workers hired through union hiring halls in accordance with collective bargaining agreements.



Data Breach (AB 1710) increases an employer’s responsibility in the event of a data breach of employees’ personal information. The statute requires businesses that own, license, or maintain personal information of a California resident to establish and maintain reasonable security procedures and practices. In the event of a data breach, if the person or business was the source of the breach, AB 1710 requires that entity to offer, at no cost to the victim, appropriate identity theft prevention and mitigation services for at least 12 months.

Unemployment Appeal Extension (SB 1314) modifies the Unemployment Insurance Code by providing more time for an employee to contest the denial of unemployment benefits. As of July 1, 2015, an applicant has thirty (30) days to request reconsideration from the Employment Development Department, instead of only 20 days from the date of the denial notice.



The Labor Law Newsletter is published to alert readers of recent developments in the law and is not a substitute for legal opinion based on specific facts.



Developments in Civil Remedies Legislation

Arbitration Limits (AB 2617) prohibits businesses from requiring employees to waive certain legal rights and agree to arbitration instead. The bill also prohibits businesses from refusing to contract with individuals who refuse to waive those rights and applies to any contracts modified or entered into after January 1, 2015.

Monetary Sanctions for Frivolous Litigation (AB 2494) reinstates Civil Procedure Code Section 128.5, which gives judges and arbitrators the authority to award monetary sanctions when litigants use bad faith litigation tactics, such as motions and responsive pleadings that are without merit and intended only to cause unnecessary delay.

Arbitration Disclosure (AB 802) requires private arbitration companies to collect additional information about consumer arbitration cases and provide the information in a single report that is available to the public in a format that is readily available and can be searched and sorted. This legislation only applies to arbitrations administered after January 1, 2015.

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