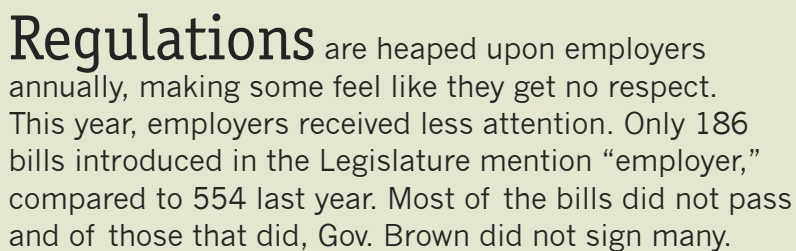


new year, new labor laws

What California
Employers
Need to Know

BY MARK TERMAN, Esq.



Minimum Wage Increase

This change affects the professional, administrative and executive overtime exemptions that require a salary of at least two times minimum wage, in addition to satisfying the exempt duties tests. This will increase the \$33,280 required annual salary to \$37,440, and then to \$41,600 in tandem with the scheduled increases to \$9 and then \$10. Also affected will be the retail and inside sales overtime exemptions that are based, in part, on whether commission employees earn more than 1.5 times minimum wage.

Related, under AB 442, the Labor Commissioner can order employers who fail to pay minimum wage to pay liquidated damages equal to the unpaid minimum wages. This is in addition to existing per employee, per violation and other civil penalties employers face for failure to pay minimum wage



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attorney fees if the court finds that the employee claim was brought in bad faith. As a practical matter, the hurdle of proving that an employee brought an action knowing it was baseless will be rarely met.

Overtime at Home

Until now, in-home “personal attendants” were exempt from overtime pay entitlement. AB 241, the Domestic Worker Bill of Rights, provides that a domestic work employee who is a personal attendant is entitled to one and a half times the employee’s regular rate of pay for hours worked in excess of nine in any workday or more than 45 hours in any workweek.

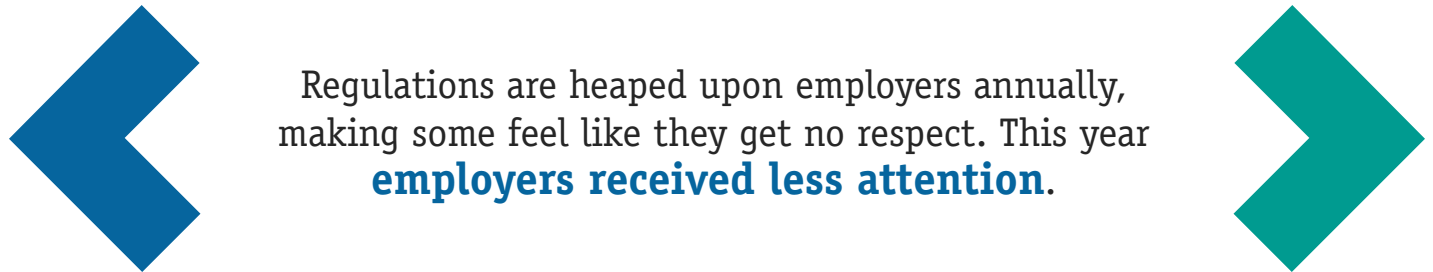
This bill narrowly defines “personal attendant” as a person employed by a private householder or by any third-party employer recognized in the health care industry to work in a private household, to

This bill seems targeted at hostile environment sexual harassment that can be caused by pervasive jokes, horseplay and demeaning behavior of a sexual nature. Employer provided anti-harassment training, like that required by California law of all supervisors every two years, is a good tool to prevent the problem.

AB 566 makes unlawful under FEHA adverse employment discrimination on the basis of military and veteran status. This protected class includes employees who are active members or veterans of the United States Armed Forces, Armed Forces Reserve, National Guard or California National Guard.

Protected Whistle-blowers

Protections for whistle-blowing employees have increased in recent years. For example, the Labor Code prohibits an employer from



Regulations are heaped upon employers annually,
making some feel like they get no respect. This year
employers received less attention.

supervise, feed or dress a child, or a person who by reason of advanced age, physical disability or mental deficiency needs supervision, and who spends no more than 20 percent of work time doing other kinds of work. Excluded from this law—and therefore not entitled to overtime pay—are minors who are baby sitters and certain “casual” or intermittent baby sitters whose vocation is not baby-sitting.

Overheating Penalties

Employers with outdoor worksites are governed by Cal-OSHA’s heat illness standards, which require, among other things, recovery periods of no less than 5 minutes at a time on an as-needed basis for employees to cool down and protect themselves. For recovery period violations, SB 435 imposes the same premium penalty as already exists for missed meal and rest periods: one hour of pay for each workday that a meal, rest or recovery period was not provided.

Paid Family Leave

The paid family leave law does not afford any rights to leave of absence. It does, however, provide for up to six weeks of wage replacement for employees who are otherwise permitted to be off work (e.g., FMLA or CFRA leave) to care for seriously ill covered family members or to bond with a child. Effective July 1, 2014, SB 770 expands the list of covered family members from children, spouses, parents and domestic partners to include grandchildren, grandparents, siblings and in-laws.

Discrimination Law Expanded

The California Fair Employment and Housing Act (FEHA) defines unlawful harassment because of sex to include sexual harassment, gender harassment and harassment based on pregnancy, childbirth or related medical conditions. SB 292 clarifies that unlawful sexually harassing conduct need not be motivated by sexual desire.

retaliating against an employee for disclosing an employer’s actual or reasonably suspected violation of federal or state statute, rule or regulation to a government or law enforcement agency. Employers cannot lawfully try to prevent an employee from making such disclosure either. SB 496 adds the same restrictions involving local rules and regulations. It also protects employees who make the disclosure to “a person with authority over the employee or another employee who has the authority to investigate, discover or correct the violation or noncompliance,” such as a manager.

It is wise for employers to have widely-known internal procedures, free from retaliation, for employees to come forward to report suspected illegal activity. This helps management know about risks and effectively investigate and self-correct. And, as a practical matter, reduce the need some employees may feel to inform the government or law enforcement.

Dismissed Criminal Convictions

Employers are generally prohibited from asking a job applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pre-trial or post-trial diversion program. SB 530 additionally prohibits employers from requiring disclosure or using information concerning a conviction that has been judicially dismissed or ordered sealed.

This bill creates exceptions where employers are required by law to obtain that information, when applicants are required to possess or use a firearm in the course of their employment, when individuals who have been convicted of a crime are prohibited by law from holding the position sought or the employer is prohibited by law from hiring an applicant who has been convicted of a crime.

Crime Victim Rights

Existing law prohibits an employer from discriminating or retaliating against an employee who is a victim of a crime for taking time off of work to appear in court as a witness or to seek court relief from domestic violence or sexual assault. Employees must give reasonable advance notice of the need for time off or, if advance notice is not feasible, documentation of the need for the time off, such as a police report or court order.

SB 288 expands these protections to include appearance as a witness in a court matter where another person is a victim. It also adds victim leave and anti-discrimination/retaliation rights for proceeding involving 10 types of serious criminal offenses, such as: solicitation of murder, vehicular manslaughter, felony child abuse, felony physical abuse of an elder or dependent adult, felony DUI causing injury and hit-and-run causing death or injury.

Employees who are victims of domestic violence, sexual assault or stalking have new protections under SB 400 if they provide notice to their employer of their status or if the employer has actual knowledge of the status. The bill prohibits employers from discriminating or retaliating against an employee because of the employee's status. Employers must engage in a timely, good faith interactive process with employees and provide reasonable accommodations that take into account exigent circumstances or danger facing the employee.

The accommodations may include "the implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault or stalking that occurs in the workplace, an implemented safety procedure, or another

because of an employee complaint and requiring more documentation than is required under federal I-9 employment eligibility rules, penalties include suspension of business licenses and charters, as well as attorneys fee recovery by plaintiffs.

SB 666 permits the state to suspend or revoke business licenses of employers for threats to contact or contact with immigration authorities. This bill also puts attorneys at risk of suspension or disbarment for similar action they take against parties and witnesses (and their families) to lawsuits and administrative actions. AB 524 makes threats to contact immigration authorities an element of an extortion crime.

Related, the California Department of Motor Vehicles will soon issue driver's licenses to undocumented individuals. These cards will contain a notation that they are not valid for federal law purposes (e.g., I-9 eligibility for employment proof), which essentially identifies a worker as undocumented.

City Specific: San Francisco

Health Care Security, Paid Sick Leave, Minimum Wage and Family Friendly Workplace ordinances govern employers with employees in the city of San Francisco.

The Health Care Security ordinance required that employers with 20 or more employees (and nonprofit employers with 50 or more employees) spend a specified minimum on health care for each employee who works eight or more hours per week in San Francisco. As of Jan. 1, 2014, the health care expenditure rate for businesses of 100 or more employees increased to \$2.44 per hour. The rate for businesses of 20-99 employees increased to \$1.63 per hour.

Under the Family Friendly Workplace ordinance, employers with

Employers should consider how these new laws impact their workplaces, and then **review and update** their personnel practices and policies with the advice of experienced attorneys or human resource professionals.

adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, or stalking, or referral to a victim assistance organization," unless that causes an undue burden on the employer, such as violating an employer's duty to maintain a safe workplace for all employees.


Immigration and Retaliation

All new California laws involving immigration issues are premised on existing law that all workers are entitled to the rights and protections of state employment law regardless of immigration status, and that employers must not leverage immigration status against applicants, employees or their families.

AB 263 prohibits employers from retaliating against applicants and employees who complain or seek information about employer compliance with employment laws, such as wage and workplace injury issues. For specified "unfair immigration related practices," which include threatening to contact or contacting immigration authorities

20 or more employees must consider employee requests for flexible or predictable work arrangements to assist with responsibilities to care for a child, a family member with a serious health condition or a parent who is age 65 or older. Within 21 days of an employee request, the employer must meet with the employee about the request. Within 21 days of that meeting, the employer must respond. Any employer denial must explain in writing the *bona fide* business reason and provide the employee with notice of the right to request reconsideration. To be eligible, employees must have worked at least six months for the employer and regularly work at least eight hours a week.

Where To Go from Here?

Employers should review and update their personnel practices and policies with the advice of attorneys or human resource professionals. 

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