2017 Is Still Young, But California Legislative Proposals Are Already Here

Insights
1.24.17

Although we have barely scratched the surface on 2017, the California Legislature is already active on the labor and employment front, with a number of new (or not so new) proposals being introduced in the first weeks of the legislative session.

These proposals continue the trend of local and state efforts in recent years focused on part-time work, equal pay requirements, and family leave policies. Several of these bills have already earned the "job killer" moniker from the California Chamber of Commerce.

"Opportunity to Work Act"
The most significant measure to be introduced thus far is Assembly Bill 5 by Assemblymember Gonzalez Fletcher (D–San Diego). Based on similar ordinances enacted in San Francisco, and (most recently as Measure E) in San Jose, AB 5 would enact the "Opportunity to Work Act" in an effort to require employers to provide additional hours of work to part time employees. AB 5 applies to employers with 10 or more employees in the state, and requires such employers to offer additional hours of work to an existing employee before hiring any additional employees or subcontractors, including hiring an additional employee or subcontractor through the use of a temporary employment agency, staffing agency, or similar entity.

In a press release accompanying introduction of the bill, Assemblymember Gonzalez Fletcher stated, "Even as we've won increases in the minimum wage to help part-time workers, that just won't cut it if you can't get enough hours of work…The Opportunity to Work Act will provide a boost to the millions of workers in California who want to work more so they can afford the necessities of life and to take care of themselves and their families in a time when housing costs, student debt, and surprise expenses are increasingly difficult to manage."

The bill does not specify a methodology by which employers are to offer additional hours to existing employees, such as by seniority, or how long the employer must give the employees to decide before being able to hire additional employees. The bill provides that an employer is not required to offer additional hours if it would result in the employer being required to pay overtime to the existing employee(s). The bill also prohibits discrimination and retaliation against employees. Employees are authorized to file a claim with the Labor Commissioner or a private civil action.

The California Chamber of Commerce has already labelled AB 5 a "job killer," noting that the bill would limit an employer's ability to effectively manage their workforce to address both consumer and employee requests. They also argue that the bill would create unnecessary delays and burdens on small employers to accommodate employee and consumer demands, subject employers to costly fines and multiple avenues of litigation for technical violations, and reduce job opportunities for the unemployed.

AB 5 has been referred to the Assembly Committee on Labor and Employment and has not been set for a hearing yet, but will likely be heard in March or April.

Equal Pay Measures

Recent years have witnessed a flurry of activity at the state level related to gender pay equality measures. Most significant was the enactment of Senate Bill 358 (Jackson) in 2015, which completely overhauled California's Equal Pay Act. This area of the law continues to be a hot topic in the Legislature, with two measures already introduced this year.

Assembly Bill 46 by Assemblymember Jim Cooper (D–Elk Grove) would specify that the California Equal Pay Act applies to both public and private sector employers. In reality, this bill is about ensuring that the law applies to the Legislature itself. Last year, there was an awkward floor debate during the deliberation on Assembly Bill 1676 (Campos), a bill which specified that prior salary cannot, by itself, justify any pay disparity. On the Senate floor, Republicans raised questions about whether the bill applied to the Legislature itself, and even asked the author to amend the bill to specifically do so. Senate Democrats would not do so, which led to grumbling among many Democratic legislators about the Legislature's willingness to impose certain requirements on businesses but not on itself. AB 46 is aimed directly at closing that perceived gap by ensuring that the California Equal Pay Act applies to legislative employees as well.

File this one under, "what's good for the goose is good for the gander."

Nor was the "salary history" debate resolved with the passage and enactment of AB 1676 last year. This year, the issue is back with the introduction of Assembly Bill 168 by Assemblymember Susan Talamantes Eggman (D–Stockton). AB 168 is virtually identical to previous legislative proposals that would have prohibited an employer from seeking salary history information (including compensation and benefits) about an applicant for employment. Proponents of these measures argue that employer use of salary history information perpetuates pay inequality for women.

Governor Brown vetoed a virtually identical measure, Assembly Bill 1017 (Campos) in 2015, arguing that SB 358 should be given a chance to work before making further changes to the law. The identical bill was reintroduced last year as AB 1676 (Campos), but (as noted above) the bill was amended to merely clarify that prior salary cannot, by itself, justify any pay disparity. And like AB 46, AB 168 specifically provides that it applies to the Legislature.

AB 46 and AB 168 have not yet been referred to policy committee

AB 40 and AB 168 have not yet been referred to policy committee.

Family Leave Proposals

Another perennial hot topic in the California Legislature are bills dealing with family leave. Already in 2017, we have seen two bills introduced that repeat policy proposals from recent years.

Senate Bill 62 by Senator Hannah-Beth Jackson (D-Santa Barbara) would amend the California Family Rights Act (CFRA) to cover leave to care for grandparents, grandchildren, siblings, and parents-in-law. The bill would also remove existing age and dependency restrictions on the existing definition of "child" under CFRA to, for example, cover leave to care for adult children who are otherwise independent.

This expansion of the definition of "family member" under CFRA has been attempted numerous times throughout the years, most recently in Senate Bill 406 (Jackson) from 2015. That measure was vetoed by Governor Brown, who noted that the expansion could create a disparity with the federal Family and Medical Leave Act (FMLA) that could result in employers being required to provide up to 24 weeks of leave in a 12 month period.

The California Chamber of Commerce has designated SB 62 as a "job killer," noting that the initial intent of CFRA was to provide a balance between an individual's work life and personal life. However, they argue that this proposal would disrupt that balance and have a negative impact on California employers. Given that the individuals SB 62 proposes to add to the protected leave list are not covered under the corresponding and similar leave provided by the federal FMLA, the Chamber notes that this change will potentially provide a California employer with an obligation to provide up to 24 weeks of protected leave – the same concern raised by the Governor by his veto message from 2015.

Senator Jackson has also introduced Senate Bill 63, a reintroduction of her efforts in 2016 to provide job-protected leave to employees who work for employers not covered under the CFRA.

Last year, after a tortuous legislative history (which including her bill dying the first time in the Assembly Committee on Labor and Employment), Senator Jackson ultimately sent Senate Bill 654 to the Governor's office. SB 654 would have required employers with 20 or more employees to be provided with six weeks of job-protected leave to bond with a new child. However, SB 654 was vetoed by Governor Brown, who stated that he was concerned about the impact of the proposal, particularly on small businesses, and the potential liability that could result. He expressed particular concern that the author had rejected an amendment offered by the California Chamber of Commerce that would have required a mediation process prior to any private lawsuit being filed by a worker, stating, "I believe this is a viable option that should be explored by the author."

SB 63 (this year's version of the proposal) similarly applies to employers with 20 or more employees (within 75 miles of the worksite) but increases the leave entitlement to twelve weeks, rather than six weeks. In addition, the bill does not respond to the Governor's stated concerns in the veto message about a requirement for mediation prior to litigation. Therefore, SB 63 is actually broader than the bill that was sent to the Governor last year. This is likely due to the author's desire to start with an

bill that was sent to the Governor last year. This is likely due to the author's desire to start with an aggressive version of the bill to leave room for negotiating amendments during the legislative process.

The California Chamber of Commerce has also labeled SB 63 a "job killer," arguing that it will overwhelm small employers by adding to the burden under which they already struggle.

SB 63 has been referred to the Senate Committee on Labor and Industrial Relations and the Senate Judiciary Committee, and has not been set for a hearing yet, but will likely be heard in March or April.

Busy Year Ahead?

And this is likely just the tip of the iceberg. The deadline for bills to be introduced is February 17, and the vast majority of bills are introduced in the last few days before that deadline. Moreover, 2017 promises to be a busy year as labor groups and worker advocates respond to federal developments under the Trump Administration by pursuing state-level policies here in California. Stay tuned here for further legislative updates as the year progresses.

Related People

Benjamin M. Ebbink
Partner
916.210.0400
Email