



It's April, and New Bills “Spring” Forth in the California Legislature

Insights

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“Poor, dear, silly Spring, preparing her annual surprise.” – Wallace Stevens

Ah, spring. Birds are chirping. Flowers are blooming. Backyard gardens are awaking from their long winter slumber.

But blossoms are not the only things spouting this season. Although the deadline to introduce bills in the California Legislature was in February (as we summarized [here](#)), recent weeks have seen a new crop of labor and employment bills spring forth. Some bills were introduced as empty “spot” bills, only to have substantive language inserted in recent days. Other bills have so dramatically changed as to constitute entirely new proposals.

These bills range from the mundane to the major. However, because (like a spring storm) things can change so rapidly in the California Legislature, it is critical for employers to stay on top of current developments.

So without further ado, we present this spring’s crop of new legislative proposals:

AB 450 (Chiu) – Immigration Worksite Enforcement Actions – This bill puts California employers right in the middle of the national immigration debate by (1) requiring them to demand warrants and subpoenas from ICE prior to immigration worksite enforcement actions, and (2) requiring them to notify the Labor Commissioner prior to such actions (including I-9 self-audits), who in turn is authorized to conduct a wall-to-wall audit looking for any violation of the law. Read more about this bill [here](#).

AB 581 (McCarty) – Apprentices – Imposes certain recordkeeping requirements on apprenticeship programs that receive specified grant funds from the California Apprenticeship Council. If the program is found to be using grant funds for purposes other than training apprentices, the program shall be ineligible to receive future grants and their registration may be rescinded.

AB 817 (Flora) – Emergency Medical Services: Rest or Recovery Periods – This bill, brought in response to the recent *Augustus v. ABM Security Services* case, provides that an employer providing emergency medical services (EMS) may require employees to monitor and respond to pagers, radios, station alert boxes, intercoms, cell phones, or other communication methods during rest or

recovery periods, without penalty. The bill provides that breaks interrupted for emergency response purposes shall be rescheduled, and provides that the bill is declaratory of existing law. Contrast this bill with AB 263 (Rodriguez), which specifically requires uninterrupted meal and rest periods for EMS workers.

AB 889 (Stone) – “Secret” Settlements – Prohibits court orders or settlements that keep secret certain information related to the existence of a danger to the public health or safety, except pursuant to a court order based upon independent findings, as specified. Recent amendments were made to this bill that appear to clarify that it does not apply to employment claims. However, business groups are still opposed because the standard required to obtain a protective order (such as to protect trade secrets) is too high and based only upon an allegation of a claim.

AB 1080 (Gonzalez Fletcher) – Bid Preference: Employee Health Care Expenditures – This bill requires state agencies awarding public works contracts to provide a 2% bid preference to a bidder whose employee health care expenditures, and those of its subcontractors, are at least 6.5% of the aggregate wages paid to its employees in California. This will likely benefit union contractors, which is the intention.

AB 1099 (Gonzalez Fletcher) – Tips: Gig Economy – This bill requires an employer who allows a patron to pay for services by debit or credit card to also accept a debit or credit card for payment of gratuity, payable not later than the next regular payday. Although this bill was introduced in February, recent amendments limit the bill to the following employers: hotels, car washes, licensed barbershops and salons (including nail salons), massage establishments, restaurants, and “gig employers” that use online platforms to connect customers with services. It is also likely that this bill will be used as a vehicle for broader proposals related to the “gig” economy, such as the author’s unsuccessful AB 1727 from last year, which would have allowed gig economy workers to organize. This bill is definitely one to watch.

AB 1209 (Gonzalez Fletcher) – Gender Pay Differentials – Requires employers with 250 or more employees to collect specified information on gender pay differentials. The information must be published on a public website, submitted to the Secretary of State, and updated annually.

AB 1425 (Kalra) – Apprentices – Requires contractors to provide specified contract information to the apprenticeship committee for each applicable craft or trade in the area of the public works project within 10 days of the execution of a contract (or not later than the first day work begins). This bill also provides that a contractor or subcontractor that knowingly commits four or more apprenticeship violations in a three-year period shall be ineligible to bid on a public works contract for one year.

AB 1556 (Stone) – Pregnancy Disability Discrimination – Amends provisions of the Fair Employment and Housing Act related to pregnancy disability discrimination and leave to delete the terms “female person” and “female employee” and replace them with gender neutral terms. This bill is sponsored by Equality California, who states the following as rationale for the bill: “These

bill is sponsored by Equality California, who states the following as rationale for the bill: "These changes ensure that transgender, nonbinary, and gender non-conforming people are reflected in these protections and know that they can rely on them to meet their health needs if they become pregnant or have related medical conditions during the course of their employment."

AB 1565 (Thurmond) – Overtime Salary Threshold – Provides that an executive, administrative or professional employee is exempt from overtime if they earn a monthly salary equivalent to \$3,956 or twice the state minimum wage, whichever is higher. As discussed [here](#), this bill is a labor-supported response to the apparent demise (thus far) of the Obama Department of Labor effort to increase the salary threshold required for the overtime exemptions under federal law.

AB 1700 (Cooper) – Marijuana: Cal/OSHA Training – This bill provides that an applicant for a license for commercial marijuana activities (either medical or recreational) must certify that they employ, or will employ within one year, an employee who has successfully completed an OSHA 30-hour general industry course. This requirement does not apply if the applicant has a valid collective bargaining agreement. The bill is sponsored by the United Food and Commercial Workers Union.

AB 1701 (Thurmond) – Labor-Related Liabilities: Original Contractor – This bill imposes liability on a general contractor for wage and fringe benefit obligations incurred by a subcontractor at any tier, and authorizes a private civil action within one year of the date of completion of the work. This bill is sponsored by the California Conference of Carpenters, and appears intended primarily to allow them to pursue the general contractor for unpaid "fringe benefit" contributions (pension/health and welfare) by their signatory subcontractors. Not surprisingly, contractor groups are strongly opposed to this proposal.

SB 258 (Lara) – Cleaning Product Right to Know Act of 2017 – This bill would require manufacturers of "cleaning products" to disclose chemical ingredients and other information. However, the bill also impacts employers by requiring them to identify cleaning products and list the ingredients of products by labeling any container used in the workplace into which a cleaning product is transferred.

SB 306 (Hertzberg) – Retaliation – This bill dramatically revises retaliation claim procedures, and reflects language similar to that which has been proposed by Governor Jerry Brown in a [budget trailer bill](#). Among other things, this bill authorizes the Labor Commissioner to petition the court for injunctive relief (such as reinstating the employee) before completing an investigation and determining whether a violation has occurred. The bill also requires the employer to pay attorneys' fees and costs if the Labor Commissioner prevails in an enforcement action.

SB 490 (Bradford) – Hair Salons: Commission Wages – This bill is brought in response to AB 1513 regarding piece rate wages and concerns that have been expressed by the salon industry. This bill provides that wages paid to licensed employees, when paid as a percentage or a flat sum portion paid to the employer by the client, constitute "commissions", provided that the employee is paid a regular hourly rate of at least two times the state minimum wage.

SB 621 (Bradford) – Overtime Compensation: Private School Teachers – This bill is a follow-up to AB 2230 (Chu) from last year, which established a new earnings standard for designating private school teachers as exempt employees (de-coupled from the “twice the state minimum wage” standard). This bill simply clarifies an ambiguity in the law by specifying a proportional salary applicable to part-time teachers.

SB 772 (Leyva) – Cal/OSHA Regulations – Existing state law requires an in-depth economic assessment (known as the Standardized Regulatory Impact Assessment – SRIA) of any regulation estimated to cost employers over \$50 million. This bill would exempt Cal/OSHA regulations from that requirement. The author of this bill sponsored legislation last year (SB 1167) to require the adoption of an indoor heat illness standard. She indicates that this bill is intended to help expedite the adoption of that regulation and argues that the SRIA requirement is duplicative and can lead to unnecessary delay.

Conclusion

As in life, the legislative process is full of spring surprises. Check back here to see which of these proposals make it out of the nest, and which wither and die on the vine.

Related People



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