



The Suspense is Killing Me! What Big Labor Bills Will Make it Off the Suspense File?

Insights

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In the California Legislature, bills first are referred to the appropriate policy committee for hearing. Labor bills are referred to the Labor Committee, crime bills are referred to the Public Safety Committee, health bills are referred to the Health Committee. You get the picture.

Bills that make it through policy committee next go to appropriate fiscal committee if they are deemed to have a “fiscal impact.” This means the bill has some fiscal cost to the state, usually through enforcement responsibilities. Contrary to popular misconception, a proposed bill is not deemed “fiscal” merely because it will cost a lot of money for private employers to comply with – they key is that there must be some fiscal impact to the State of California.

Once before the Senate or Assembly Appropriations Committee, bills that have a fiscal impact of a certain level (typically more than \$150,000) are sent to a special “holding pen” called the suspense file. In late May, the Chairs of the respective Appropriations Committees get to decide which bills are released from the suspense file (and proceed to the floor for a vote of the entire chamber) and which are held on the suspense file (effectively killed).

This obviously gives a lot of power to the Chairs of the Appropriations Committee, which is why they represent some of the most coveted committee assignments in Sacramento. In theory, these decisions are supposed to be made on a fiscal basis to protect the financial well-being of the state. In reality, these are often political decisions. Some of the most intense lobbying by members and interest groups occurs at this time of year, as they are trying to ensure that a particular bill makes it off the suspense file (or stays there, as the case may be).

In addition, many of the bills that are allowed off the suspense file are done so with amendments – either submitted by the author or imposed on the author by the Chair. Sometimes these amendments can be very significant and can change the impact of the proposed legislation, for good or for bad. The entire bill can change in a matter of seconds.

It’s a time of high-drama in the California Legislature. And it’s right around the corner.

What Big Labor Bills Are on the Suspense File?

Many of the most significant labor and employment proposals end up on the suspense file (generally because, if enacted, they would result in significant enforcement costs for the Labor Commissioner

or other state agencies). Employers and others are watching closely to see which bills survive for another day and which bills die a quiet death.

This year, significant employment and labor bills on the suspense files include the following:

Assembly Appropriations Suspense File

AB 199 (Chu) – Public Works: Residential Projects – Defines “public works” for prevailing wage law purposes to include private residential projects built on private property that are built pursuant to an agreement with successors to redevelopment agencies. As introduced, this bill would have applied prevailing wage requirements to almost all private residential construction. After intense opposition, the bill has been amended to its current form, but this bill should continue to be watched closely.

AB 263 (Rodriguez) – Emergency Medical Services Workers “Bill of Rights” – Requires an employer that provides EMS services to authorize and permit its employees to take rest periods, and to provide meal periods. Recent amendments provide that an employer may require employees to monitor pagers, radios, or similar equipment during such breaks. This bill also requires the Emergency Medical Services Authority annually to post specified information regarding violent incidents involving EMS providers in the performance of their duties.

AB 353 (Voepel) – Veterans’ Preference – Hiring Policy – Authorizes a private employer to establish and maintain a written veterans’ preference employment policy to give a voluntary preference for hiring or retaining a veteran. The granting of such a preference, in and of itself, shall not be deemed to violate local or state employment discrimination laws. This bill is similar to AB 1383 (Jones) from last year, which failed passage in the Senate Judiciary Committee.

AB 387 (Thurmond) – Minimum Wage: Health Professionals: Interns – Provides that state minimum wage law applies to employers that employ a person engaged in a period of supervised work experience to satisfy requirements for licensure, registration, or certification as an “allied health professional,” as defined.

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. Read more about this bill [here](#).

AB 569 (Gonzalez Fletcher) – Discrimination: Reproductive Health – Prohibits employers from taking adverse employment action against an employee based on his or her reproductive health decisions, including the use of any drug, device, or medical service related to reproductive health by the employee or a dependent. This bill also prohibits employers from requiring workers to sign a code of conduct or similar document that purports to deny an employee the right to make his or her own reproductive health care decisions.

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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 676 (Limón) – Child Care and Development: OSHA Training – Requires early educators (as defined) to attend a one-time, two-hour training on OSHA risks specific to the child care profession.

AB 708 (Quirk-Silva) – OSHA: Responding Agency Notifications – Revises notice provisions that require specified first responders to notify Cal/OSHA after accidents involving specified injuries or death.

AB 815 (Cooper) – Farm Labor Contractors – Requires the Labor Commissioner to ensure that the Fresno DLSE office has sufficient resources for duties of the Farm Labor Contractor Special Enforcement Unit.

AB 831 (Patterson) – Tax Credits: Compliance – Provides a tax credit for qualified small businesses of \$25 for each hour spent on compliance with state regulations and laws (not to exceed \$1,200).

AB 912 (Obernolte) – California Small Business Regulatory Fairness Act – Requires state agencies to assist small businesses in complying with the law. This bill also requires state agencies to provide for the reduction of civil penalties for small businesses under appropriate circumstances.

AB 1008 (McCarty) – “Ban the Box” – This bill would enact a statewide version of the “ban the box” ordinance recently adopted in Los Angeles. Among other things, the bill prohibits employers from asking about or considering conviction history of an applicant until a conditional offer of employment has been made, and requires employers to provide certain information to applicants and allow for a 10-day opportunity for the applicant to submit evidence of mitigation or rehabilitation.

AB 1066 (Aguiar-Curry) – Prevailing Wage: Tree Removal – Amends the definition of “public works” for purposes of state prevailing wage law to include tree removal.

AB 1080 (Gonzalez Fletcher) – Public Contracts: Bid Preferences: Employee Health Care Expenditures – Requires state agencies awarding public works and other specified contracts (including package delivery, custodial services, landscaping and parking attendants) to provide a 10 percent bid preference to a bidder or subcontractor that provided “credible health care coverage” during the 12 months preceding submission of the bid.

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. 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 1250 (Jones-Sawyer) – Contracts for Personal Services – Limits the ability of counties and cities to contract for personal services by imposing significant hurdles, including a cost/benefit analysis (paid for by the proposed contractor).

Senate Appropriations Suspense File

SB 49 (Jackson) – California Environmental, Public Health, and Workers Defense Act of 2017 – Among other things, this bill prohibits a state agency from amending or revising rules or regulations in a manner that is less stringent of workers’ rights than standards established pursuant to federal law in existence as of January 1, 2016.

SB 63 (Jackson) – New Parent Leave – This bill would provide up to 12 weeks of job-protected family leave to bond with a new child for employees that work for employers with 20 or more employees (as opposed to CFRA, which applies to employers with 50 or more employees). This bill is similar to the author’s SB 654, which was vetoed last year by Governor Brown. Notably, that bill only provided for six weeks of job-protected leave, whereas SB 63 would authorize up to 12 weeks.

SB 201 (Skinner) – Higher Education Employer-Employee Relations Act (HEERA) – Grants collective bargaining rights to students employed as research assistants (RAs) at the University of California, the California State University, and the Hastings College of Law.

SB 219 (Wiener) – LGBT Long-Term Care Facility Resident’s Bill of Rights – This bill would prohibit skilled nursing facilities, intermediate care facilities, and residential care facilities from taking specified actions based on a resident’s actual or perceived sexual orientation, gender identity, gender expression, or HIV status, including refusing to use a resident’s preferred name or pronoun.

SB 225 (Stern) – Human Trafficking: Hotels and Motels – Revises a specified human trafficking notice that certain establishments are required to post to include the ability to text certain hotlines, and makes other minor changes.

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 270 (Atkins) – Human Trafficking: Hotels and Motels – Requires a hotel or motel that provides lodging services in the state to train its employees who are likely to interact with victims of human trafficking in recognizing the signs of human trafficking and how to report these signs to the appropriate law enforcement agency. This bill is similar to AB 1942 (C. Garcia) from last year, which was held under submission in the Assembly Appropriations Committee.

SB 295 (Monning) – Farm Labor Contractors – This bill provides that violations of specified sexual harassment training requirements applicable to farm labor contractors are violations of the Labor Code and subject to citation by the Labor Commissioner. The bill also requires that sexual harassment training for each agricultural employee be in a language understood by that employee.

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 562 (Lara) – The Healthy California Act – Establishes a comprehensive universal single-payer health care coverage program for all residents of the State of California.

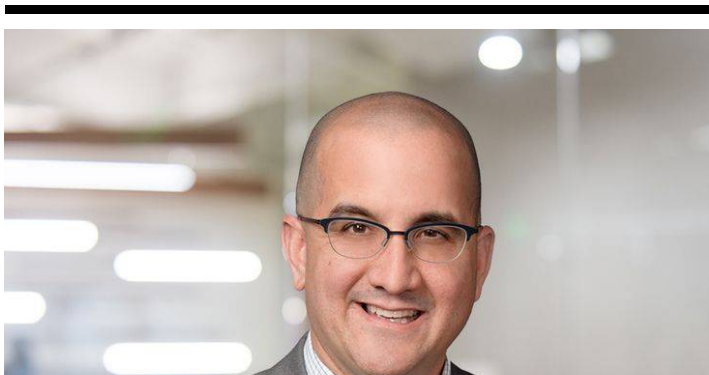
What's Next?

On Friday May 26, 2017, both the Assembly Appropriations Committee and the Senate Appropriations Committee will hold special hearings. During these hearings (which occur simultaneously) the respective Chairs will read through hundreds of bills on the suspense files and announce (with great fanfare) which bills advance and which bills die.

It's one of the most dramatic moments during the legislative process, as in one moment legislators, advocates, and the public learn which bills live and die.

Check back here for updates on what bills employers have to continue to monitor, and which bills they can forget about (at least for this year).

Related People





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