



Top Ten List – Track These 10 Important Employment Bills as the California Legislative Year Comes to a Close

Insights

8.09.17

When the Legislature reconvenes from its summer recess on August 21, it will have only a few short weeks to finish work on legislation for this year. All bills must be passed and sent to Governor Brown by September 15, who will have until October 15 to sign or veto bills.

This year, the Legislature introduced a whopping 2,495 bills – and hundreds of these had to do with labor and employment issues. Some bills failed to make it out of policy or fiscal committee. Some bills were made into “two year” bills, meaning they were put on hold for this year but may be taken up again in 2018. Most, however, continue to move through the process as the legislative year comes to a close.

So which bills are the most important to track? Here’s our list of the ten most significant labor and employment bills still pending in Sacramento. Most of these would add significant responsibilities and obligations to businesses – so California employers should closely track these proposals as they near the finish line.

So with that, here’s our “top ten list” of pending bills to watch:

AB 168 (Eggman) – Ban on Salary History Inquiries

This topic is likely a familiar one for employers, as it has been the subject of previous legislative efforts in California. In addition, several states and cities (including [San Francisco](#)) are adopting their own local ordinances on this subject – so it is one that has been in the news of late. [AB 168](#) prohibits an employer from seeking salary history information about an applicant for employment. Equal pay advocates have argued that employer reliance on prior salary history perpetuates wage inequality based on factors such as gender. In addition, AB 168 requires an employer to provide the pay scale for a position to an applicant, upon reasonable request. Governor Brown vetoed a previous version of this bill, but this measure has bipartisan support, including two Republican co-authors.

Status: This bill is pending on the Senate Floor.

AB 450 (Chiu) – Immigration Worksite Enforcement Actions

This bill places California employers squarely in the middle of the national debate about immigration. Among other things, [the bill](#) (1) requires employers to demand warrants and subpoenas from ICE prior to immigration worksite enforcement actions, and (2) requires employers to notify the workers, their representatives, and the Labor Commissioner prior to immigration enforcement activity. Violations of any of the bill's provisions are punishable by a civil penalty of between \$2,000 and \$10,000. Read more about this bill [here](#). In recent weeks, [media stories](#) have reported several instances of ICE agents showing up at Labor Commissioner hearings, allegedly at the instigation of the employer. These stories may increase the chances that Governor Brown will sign legislation such as AB 450.

Status: This bill is pending in the Senate Appropriations Committee.

AB 569 (Gonzalez Fletcher) – Discrimination: Reproductive Health

[AB 569](#) prohibits an employer from taking adverse action against an employee based on the employee's reproductive health care decisions, including the use of any drug, device, or medical service related to reproductive health of the employee or a dependent. In addition, the bill prohibits an employer from requiring an employee to sign or adhere to a code of conduct that purports to deny the employee the right to make their own reproductive health care decisions. Because this bill adds a new section to the Labor Code, any violation would be subject to the Labor Code Private Attorneys General Act (PAGA).

Status: This bill is pending in the Senate Appropriations Committee.

AB 1008 (McCarty) – “Ban the Box”

Another hot topic at the state and local levels are proposals that seek to limit an employer's ability to consider criminal history information about applicants for employment. [AB 1008](#) is largely based on an ordinance adopted by the City of Los Angeles. The bill prohibits employers with five (5) or more employees from considering criminal history until a conditional offer of employment has been made. If an employer decides to deny employment based on the criminal history, they must make an individualized assessment and provide the applicant with a five-day opportunity to respond before the employer can make a final decision.

Status: This bill is pending in the Senate Appropriations Committee.

AB 1209 (Gonzalez Fletcher) – Gender Pay Differentials

Sticking with the theme of gender pay equality, [AB 1209](#) seeks to change employer behavior through the public disclosure of gender pay data. AB 1209 requires employers with 500 or more employees, beginning in July 2020, to report information (by job classification or title) on salary differences between male and female exempt employees and board members. This information would be reported to the Secretary of State, who would publish the information on a public website. Employer representatives have objected that this bill does not acknowledge there may be lawful, legitimate and nondiscriminatory reasons for pay differentials, which are not accounted for in this public

disclosure. Instead, opponents contend this bill seeks to compel changes in corporate behavior through public shaming, which may not be based on accurate or complete information.

Status: This bill is pending in the Senate Appropriations Committee.

AB 1565 (Thurmond) – Overtime Salary Threshold

Thought debate over the Obama Administration DOL “overtime rule” was over? Wrong! This bill 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. This figure roughly represents the amount proposed by the Obama Administration – which equates to an annual salary of \$47,472. 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. California’s exemption will reach this salary level on its own in 2019 (or 2020 for smaller employers) as our minimum wage increases, but this bill will speed up the process.

Status: This bill is pending on the Senate Floor.

SB 49 (De León and Stern) – California Environmental, Public Health and Workers Defense Act of 2017

Beware of bills with lofty titles! While the “California Environmental, Public Health and Workers Defense Act of 2017” (or SB 49) is aimed primarily at safeguarding California environmental protection against anticipated encroachment by the Trump Administration, buried in the bill’s language is a significant provision that impacts labor and employment standards. Among other things, SB 49 prohibits a state agency that implements specified federal laws from amending or revising its rules and regulations in a manner that is less stringent in its protection of workers’ rights or worker safety than standards established by federal law in existence as of January 1, 2016. This could impact workplace health and safety and other labor and employment matters.

Status: This bill is pending in the Assembly Appropriations Committee.

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.

Status: This bill is pending in the Assembly Appropriations Committee.

SB 306 (Hertzberg) – Employment Retaliation

SB 306 dramatically revises retaliation claim procedures under California law. Among other things, this bill authorizes injunctive relief (such as reinstating the employee) in retaliation cases, before

case has been completely investigated or litigated to determine whether a violation has occurred. The bill also allows the Labor Commissioner to cite an employer for retaliation independently, without an employee complaint.

Status: This bill is pending in the Assembly Appropriations Committee.

SB 396 (Lara) – “The Transgender Work Opportunity Act”

This bill requires the already-mandated (AB 1825) sexual harassment training requirement for supervisory employees (of employers with 50 or more employees) to include harassment based on gender identity, gender expression, and sexual orientation. This bill also requires employers to post a poster on “transgender rights” in a prominent and accessible location in the workplace. Read more about this bill [here](#).

Status: This bill is pending in the Assembly Appropriations Committee.

Conclusion

Things will move quickly when the Legislature reconvenes on August 21, so monitor these bills closely. In addition, bills are often amended during the last few weeks of the year – as deals are made and authors try to negotiate language that has the best shot at getting a signature from the Governor. Bills can be significantly amended (for good or for bad) during the last few weeks of session. Finally, beware of last minute “gut and amend” proposals that represent completely new bills rushed through the process at the last minute.

We’ll keep you updated on latest developments.

Related People



Benjamin M. Ebbink
Partner
916.210.0400
Email

