The End is Near! – Follow These Labor and Employment Bills as the California Legislative Year Wraps Up

Insights
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It's a time of high-drama in Sacramento. With less than two weeks to go in the legislative year, many of the hot-button labor and employment bills we have been tracking all year await final action. Many bills are significantly amended in the last days of session as stakeholders scramble to get those final votes to the get the bill to the Governor's desk. So keep close track of these bills because things can change in a heartbeat!

The deadline is September 15 for bills to be passed and sent to Governor Brown. He will then have until October 15 to sign or veto legislation.

Did Any Bills Die on the Suspense File?
On Friday, the Assembly and Senate Appropriations Committees met to decide the fate of hundreds of bills in announcing which bills would make it off the fiscal "suspense file" and which bills would die an untimely death.

Traditionally, very few labor and employment bills are held on the suspense file as labor and other stakeholders wield tremendous power in muscling legislation through the process.

The following bills were held on the suspense file and are essentially dead:

AB 676 (Limón) – Child Care and Development: OSHA Training – Requires the establishment of an Early Educators' Occupational Safety and Health Training Program relating to occupational health and safety risks specific to early education professionals. The bill requires an early educator to attend the training within 6 years of it first being offered, or within 3 months of becoming an early educator, whichever occurs later.

AB 1686 (Gloria) – Cannabis Licensing: Labor Peace Agreements – Existing law requires cannabis licensees with more than 20 employees to enter into a labor peace agreement. This bills would require the labor peace agreement to be submitted electronically to the Bureau of Cannabis Control.

AB 1700 (Cooper) – Cannabis: OSHA Training – Requires applicants for a state cannabis license to provide a statement that the applicant employs (or will employ within one year of receiving a license) an employee who has successfully completed an OSHA 10-hour general industry course.

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Two-Year Bills
The following bills were made into "two-year" bills. This means they can be taken up in January (as opposed to bills that were held on the suspense file) but will not move forward for now:

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, and makes special accommodations for air ambulances. 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 1250 (Jones-Sawyer) – Counties: Contracts for Personal Services - Limits the ability of counties to contract for personal services by imposing significant hurdles, including a cost/benefit analysis.

So What's Left?
A lot. Some of the most significant and controversial labor and employment bills are awaiting final floor votes before being sent "downstairs" to the Governor.

The following bills are pending on the respective floors of the Senate and Assembly:

Pending Assembly Bills
AB 46 (Cooper) – Gender Pay Inequality – Provides that the California Equal Pay Act applies to both public and private employers.

AB 168 (Eggman) – Salary History Information – Prohibits an employer from seeking salary history information about an applicant for employment. This bill also requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant for employment. Previous legislative efforts in this regard have not been successful.

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 260 (Santiago) – Human Trafficking – This bill adds hotels, motels, bed and breakfast inns, and similar transient lodging establishments, other than personal residences, to the list of businesses and other establishments that are required to post information about human trafficking on their premises.

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AB 326 (Salas) – Barbering and Cosmetology: Physical and Sexual Abuse Awareness Training: Requires an existing health and safety course adopted by the board to include physical and sexual abuse awareness.

AB 402 (Thurmond) – OSHA: Plume – Requires Cal/OSHA to convene an advisory committee to develop a regulation requiring health facilities to evacuate or remove surgical "plume" through the use of a plume scavenging system. This bill is similar to AB 2272 from last year, which was vetoed by Governor Brown.

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 and their representatives 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.

AB 500 (Bloom) – Employee Codes of Conduct – Requires a school that maintains a section on employee interactions with pupils in its employee code of conduct to provide a copy to parents and guardians of pupils and post in on the school's website.

AB 568 (Gonzalez Fletcher) – School and Community College: Paid Maternity Leave – Requires school districts and community colleges to provide at least 6 weeks of paid leave for pregnancy, childbirth, and related conditions.

AB 569 (Gonzalez Fletcher) – Discrimination: Reproductive Health - 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).

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 978 (Limón) – OSHA IIPPs – This bill requires employers, upon written request, to provide a copy of the written injury and illness prevention program to an employee or authorized representative. This bill is similar to AB 2895 from last year, which was not taken up on the Senate floor.

AB 1008 (McCarty) – "Ban the Box" – This bill prohibits employers with five (5) or more employees from considering criminal history until a conditional offer of employment has been made. If an

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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.

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 and custodial or janitorial services) to provide a 5 percent bid preference to a bidder or subcontractor that provided "credible health care coverage" during the 12 months preceding submission of the bid.

AB 1209 (Gonzalez Fletcher) – Gender Pay Differentials – This bill requires employers with 500 or more employees, beginning in July 2020, to biennially report information (by job classification or title) on wage 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.

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 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 1603 (Ridley-Thomas) – Meyers-Milias-Brown Act: Joint Employment – This bill, for purposes of the Meyers-Milias-Brown Act, adopts the NLRB's *M.B. Sturgis* rule that a bargaining unit of solely and jointly employed employees may be appropriate and that employer consent to such a unit is not necessary. Recent amendments limit the bill to specified public clinics or hospitals.

AB 1701 (Thurmond) – Labor-Related Liabilities: Original Contractor – This bill, sponsored by the California Conference of Carpenters, would make a general contractor on a construction project liable for wages or fringe benefits not paid by a subcontractor at any tier of the project. The bill would also provide for a civil action to enforce this liability.

Pending Senate Bills

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SB 33 (Dodd) – Arbitration Agreements - Provides that arbitration is not compelled when the court determines that a petitioner is a financial institution that seeks to apply a written agreement to arbitrate, contained in a contract consented to by a consumer, to a purported contractual relationship with that consumer created fraudulently by the petitioner without the consumer's consent and by unlawfully using the consumer's personal identifying information.

SB 49 (De León) – California Environmental, Public Health, and Workers Defense Act of 2017 – Among other things, this bill 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.

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 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 provide specified information to employees about cleaning products used in the workplace.

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. Among other things, this bill authorizes injunctive relief (such as reinstating the employee) in retaliation cases, before the 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.

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SB 396 (Lara) – Harassment Training: Gender Identity, Gender Expression, and Sexual Orientation – Requires mandated sexual harassment training for employers with 50 or more employees to include training on harassment based on gender identity, gender expression, and sexual orientation. This bill also requires employers to post a notice developed by DFEH regarding transgender rights in a prominent and accessible location in the workplace. Read more about this bill here.

SB 418 (Hernandez) – Public Contracts: "Skilled and Trained Workforce" Requirements – This bill originally dealt with the "de minimis" exemption for the use of public funds on public works project. However, the bill was recently amended to delete its contents and address a completely different issue. Existing law imposes a "skilled and trained workforce" requirement on certain projects, including a requirement that a certain percentage of skilled journeypersons on a project are graduates of an apprenticeship program. This bill would exempt nearly 20 occupations from those requirements.

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 base hourly rate of at least two times the state minimum wage for all hours worked in addition to commissions paid. The bill also provides that an employee may be compensated for rest and recovery periods at a rate of pay not less than the employee's regular base hourly rate.

SB 491 (Bradford) – Discrimination: Local Enforcement – Requires DFEH to establish an advisory group to study the feasibility of authorizing local government entities to also enforce employment discrimination statutes. If the advisory group concludes that enforcement by local authorities is feasible, it is directed to develop an implementation plan and draft proposed legislation for the next legislative session.

SB 548 (Atkins) – PERB: Expedited Petitions – Authorizes PERB to grant expedited status for specified matters, and requires PERB to grant expedited status for other matters that meet certain criteria.

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.

Updates

Check back here to find out which bills make it to the Governor's desk – and which are signed or vetoed!

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vetoed?

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