



Your Comprehensive Guide to 2018 Proposed California Legislation

Insights

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February 16 was the deadline to introduce new bills in the California Legislature. By that date, nearly 2,200 bills were introduced. While that may seem like a staggering amount of legislative proposals (especially for a legislative body with only 120 members), this number is consistent with the volume of bills that have been introduced in recent years.

We'll be tracking this legislation all year and updating you on key developments.

Sexual Harassment Takes Center Stage

As we [discussed](#) last week, the number one employment topic in 2018 will be sexual harassment, with nearly two dozen bills introduced on the subject in the wake of widespread attention on this issue and the #metoo movement. We won't repeat our discussion of those bills here, but you'll want to make sure you read our [primer](#) if you haven't done so already.

But sexual harassment is not the only workplace issue the Legislature will be tackling in 2018. There are a number of significant and wide-ranging proposals, most of which impose new obligations and liabilities on California employers. Some of the other key proposals this year (including links to the actual bills) include the following:

Expansion of Paid Sick Days

One of the most significant legislative enactments impacting California employer in recent years was the 2014 enactment of a paid sick leave law that requires employers to allow employees to use up to three days (or 24 hours) of sick leave per year. The author of that bill, Assemblywoman Lorena Gonzalez Fletcher, is back with a bill to expand that requirement. [Assembly Bill 2841](#) would entitle an employee to use up to **five days** (or 40 hours) of paid sick leave each calendar year. AB 2841 would also increase the accrual cap that employers may implement to ten days (or 80 hours) and make other corresponding changes.

It is likely that this bill will make it through the legislative process and to the Governor's desk. However, it may represent an opportunity to "clean up" or clarify some of vague and unclear provisions of the original law.

Employment Discrimination Protection for Medical Marijuana

One of the hottest employment issues of late has related to the intersection between employment law and marijuana policy. California legalized medical marijuana in the 1990s, and in 2016 authorized the recreational use of marijuana.

In its 2008 decision in *Ross v. RagingWire Telecommunications*, the California Supreme Court ruled that employers are not required to accommodate an employee's use of medical marijuana. However, that all may change with the introduction of Assembly Bill 2069 by Assemblyman Rob Bonta.

AB 2069 would amend the Fair Employment and Housing Act (FEHA) to prohibit employment discrimination against individuals based on their status as a medical marijuana cardholder or because of a positive drug test for cannabis. The legislation specifies that it does not prohibit an employer from disciplining an employee "who is impaired on the property or premises of the place of employment or during the hours of employment." However, as current technology does not provide a good measure for "impairment," this provision may lead to significant litigation as employers attempt to continue to maintain safe workplaces. This is definitely one to watch in 2018!

Expansion of Lactation Accommodation

Another hot public policy issue in recent years has been an employer's obligation to accommodate employees who are lactating or expressing breast milk. Several local jurisdictions (including San Francisco) have adopted their own workplace policies in this area.

Under current state law, employers are required to make reasonable efforts to provide employees with the use of a room or other location (other than a toilet stall) for purposes of expressing breast milk at work.

Two bills have been introduced to expand these requirements. The first, Assembly Bill 1976 by Assemblywoman Monique Limón, amends current law to specify that employers have to make a reasonable effort to provide a room "other than a bathroom" (not just other than a "toilet") to accommodate such employees.

The other proposal is much more expansive and is largely based on the San Francisco ordinance. Senate Bill 937 by Senator Scott Weiner would require employers to provide a lactation room (other than a bathroom) that shall be "in proximity to the employee's work area, shielded from view, and free from intrusion." SB 937 also specifies that the lactation room must (1) be safe, clean, and free of toxic or hazardous materials, (2) contain a surface to place a breast pump and personal items, (3) contain a place to sit, and (4) have access to electricity. The bill also requires employers to provide access to a sink with running water and a refrigerator on close proximity to the employee's workspace.

SB 937 permits an employer with fewer than five employees to petition the Labor Commissioner for an "undue hardship: exemption. The bill also specifies that an employer in a multitenant building may comply with the law by providing a shared space among multiple employers if the employer cannot provide a lactation location within its own workspace

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SB 937 also imposes new building standards by requiring the California Building Standards Commission to adopt new rules that require the installation of lactation space for new or remodeled construction in building with at least 15,000 square feet if the project costs more than \$5,000. The bill specifies that building standard shall provide that lactation spaces shall be at least 50 square feet, have at least one electrical outlet, have access to a sink with hot and cold running water, and shall be located no more than 500 feet from the farthest employee workstation or within two adjacent floors.

SB 937 also requires employers to develop and implement a lactation accommodation policy that includes (1) a statement about an employee's right to request lactation accommodation, (2) the process by which an employee makes a request for accommodation, (3) the employer's obligation to respond to accommodation requests, and (4) a statement about an employee's right to file complaints with the Labor Commissioner for violations. This policy must be provided to new employees or when an employee makes an inquiry about or requests parental leave, and included in employee handbooks or policies.

Employers would be required to respond to employee requests for lactation accommodations within five days. If the employer cannot provide break time or a location that complies with the law, the employer must provide a written response to the employee.

SB 937 also contains protections against retaliation, and increases civil penalties for violations from \$100 to \$500. Employees may bring complaints before the Labor Commissioner or bring a civil action. If the employee prevails, the court may award attorney's fees.

Finally, the bill requires the Labor Commissioner to develop a model policy, model accommodation request form, and a "best practices" guide that includes specified optional but recommended amenities.

Ban on "Familial Status" Employment Inquiries

Assembly Bill 1938 by Assemblywoman Autumn Burke amends FEHA to prohibit an employer from making any non-job-related inquiries (orally or in writing) that express any limitation based on an employee or applicant's "familial status." "Familial status" is defined to mean individuals under age 18 who reside with a parent or other person with care and legal custody of the person, and also includes individuals who are pregnant or in the process of securing legal custody of a minor.

This bill is less expansive than previous legislative proposals that would have prohibited employment discrimination based on "familial status" by adding that term as a protected category under FEHA.

California to Take On "Portable Benefits" for the Gig Economy

One of the more fascinating discussions regarding the gig economy and the "future of work" has centered on proposals to allow freelance or gig economy workers to have access to "portable

benefits” that they could take from job to job. Check out this recent [post](#), or our [Gig Employer Blog](#) in general, for more discussion about this emerging issue.

It appears that California will not be left behind in this public policy discussion. While just a placeholder bill for now, [Assembly Bill 2765](#) by Assemblyman Evan Low declares the intent of the Legislature to enact legislation relating to portable employee benefits in California.

This will be one of the more fascinating discussions to watch in 2018, so definitely stayed tuned to see how this proposal develops.

Janitorial Employees – Employee Status Presumption

[Assembly Bill 2496](#) by Assemblywoman Lorena Gonzalez Fletcher addresses alleged misclassification in the janitorial industry. Specifically, the bill establishes a rebuttable presumption that a worker is an employee, rather than an independent contractor, when they are performing services for which a “property service” registration is required under existing law, or are performing work for a person who is required to register as a property service employer. This bill will make it easier for janitorial employees to prove employee status, and harder for janitorial employers to provide they were independent contractors.

Workplace Safety (Cal/OSHA)-Related Bills

California has traditionally been very active on the workplace safety and health front, going well “above and beyond” the requirements of federal law. It is anticipated that this state activity will increase as California attempts to respond to federal moves by the Trump Administration in this area.

Workplace safety-related bills include the following:

- **[Assembly Bill 1789 \(Salas\)](#) – Valley Fever** – Requires the Cal/OSHA Standards Board to adopt a standard for state public works projects to prevent and control Valley Fever.
- **[Assembly Bill 2799 \(Jones-Sawyer\)](#) – Cannabis** – Requires an applicant for a state cannabis license to employ one supervisor and one employee who have completed a Cal/OSHA 30-hour general industry course.
- **[Assembly Bill 2963 \(Kalra\)](#) – Blood Lead Levels** – Requires the California Department of Public Health to report to Cal/OSHA any instance where a worker’s blood lead level is at or above a specified amount (to be determined).
- **[Assembly Bill 3031 \(Quirk\)](#) – Power Tools: Dust** – Requires an employer whose employees are involved in the use of power tools or other equipment for cutting, grinding, coring or drilling of concrete or masonry materials to provide specified training to employees to reduce health hazards associated with dust.

Gender Pay and Related Measures

Gender inequality continues to be a popular topic in Sacramento, with the following proposals introduced this year:

- **Assembly Bill 2282 (Eggman) – Salary History Information** – Last year, the author sponsored AB 168, which prohibited employers from asking about or relying upon prior salary history information. AB 2282 is a placeholder bill, and it is unclear what the author plans to do with this bill. However, if there is follow-up legislation, it may represent a good opportunity to address some of the unclear or vague components of the last year's new law.
- **Senate Bill 826 (Jackson) – Corporate Boards of Directors** – Requires publicly held corporations with their principal place of business in California to have a minimum of one woman on its board of directors. Beginning in 2021, this number would increase to 2 women (if the board has 5 directors) or 3 women (if the board has 6 or more directors).
- **Senate Bill 1284 (Jackson) – Annual Pay Reporting** – Requires employers with 100 or more employees to report a pay data report to DIR, including information on earnings by race, ethnicity and sex. This information will be provided to the Secretary of State, DFEH, and the Commission on the Status of Women and Girls.
- **Senate Bill 984 (Skinner) – State Boards and Commissions** – Requires the composition of state boards and commissions to be comprised of, at a minimum, 50 percent women.

Human Trafficking Bills

Human trafficking has been a popular issue for legislative activity in recent years, as the Legislature attempts to impose requirements on various industries related to the monitoring and reporting of human trafficking activity. This year's proposals include:

- **Assembly Bill 2034 (Kalra) – Training** – Requires a business that operates an intercity passenger rail, light rail, or bus station, to train its new and existing employees in recognizing the signs of human trafficking and how to report those signs to the appropriate law enforcement agency.
- **Senate Bill 970 (Atkins) – Training** – Requires an employer that is a hotel, motel or bed and breakfast, to provide at least 20 minutes of training regarding human trafficking awareness to employees likely to interact with victims and each new employee likely to interact with victims within six months of employment.

Public Works/Prevailing Wage Legislation

Another perennial topic in Sacramento is legislation dealing with the requirement to pay prevailing wages on public works projects. Most legislation is sponsored by the building trades unions and seeks either to (1) expand the category of activity that is considered a "public work," thereby triggering the obligation to pay prevailing wages, or (2) restrict the category of employees who can perform such work (union workers). This year is no exception:

- **Assembly Bill 3155 (Cooper) – “Warranty” Work** – Expands the definition of the term “public works” to include warranty work done under contract and paid in whole or in part out of public funds.
- **Assembly Bill 3222 (O’Donnell) – Charter Schools** – Expands the definition of the term “public works” to include work done under private contract on a project for a charter school, when the project is paid in whole or in part with the proceeds of “conduit revenue bonds.”
- **Senate Bill 913 (Hertzberg) – Charter Cities** – Legislation passed several years ago prohibits a charter city from receiving state funding for construction if the charter city does not require, or has not required, compliance with state prevailing wage laws. This bill is a placeholder for now, but should be watched closely as this was a controversial provision when enacted. It is likely that the building trades unions have plans to further restrict the actions of charter cities.

Immigration-Related Proposals

Immigration has been a hot topic in recent years, but in 2017 the heat was turned up as the California Legislature sought to “resist” immigration efforts of the Trump Administration.

Most significantly, last year Governor Brown signed AB 450, which went into effect on January 1, 2018. Among other things, AB 450 prohibited employers from voluntarily consenting to ICE access to the worksite without a judicial warrant, required employers to provide their workers with notice of certain immigration enforcement actions, and imposed new statutory penalties for violations of the law. You can read our longer summary of AB 450 [here](#).

It looks like 2018 will continue the trend of California being active on immigration measures. Bills that have been introduced this far include:

- **Assembly Bill 1885 (E. Garcia) – California Agricultural and Service Worker Act** – Declares the intent of the Legislature to enact legislation to provide undocumented persons who are agricultural or service industry employees with a permit to live and work in California. This proposal has been tried numerous times previously, without success.
- **Assembly Bill 2732 (Gonzalez Fletcher) – Retention of Immigration Documents** – This bill prohibits employers from knowingly destroying, concealing, confiscating or possessing an employee’s immigration documents for the purposes of committing trafficking, peonage, slavery, involuntary servitude, or a coercive labor practice. This bill also requires employers to provide each employee with a “Worker’s Bill of Rights” to inform the employee of specified rights, including the right to hold on to the employee’s own immigration and identification documents, and the right to be paid the minimum wage.
- **Assembly Bill 2827 (Allen) – Immigration Enforcement** – Assemblyman Travis Allen has been a vocal and outspoken critic of last year’s AB 450. This bill would state the intent of the Legislature to enact legislation that would protect a private citizen who chooses to uphold federal law within the context of the requirements of AB 450.

Wage and Hour Legislation

Other legislation related to various wage and hour issues includes the following:

- **Assembly Bill 1902 (Levine) – Personal Services Contracts** – This bill requires employers valued of at least \$1 billion that enter into personal services contracts to include a provision requiring the employees performing work under the contract to be paid a wage that is equal to an (as yet unspecified) amount.
- **Assembly Bill 2613 (Reyes) – Payday Penalties** – Existing law requires employers to pay their workers twice per calendar month on designated penalties. This bill would impose civil penalties for violations of these requirements in the amount of \$100 per employee for each initial violation, plus \$100 for each subsequent calendar day, up to seven days. Subsequent or willful violations would be subject to a \$200 penalty for each employee affected, plus \$200 for each calendar day, up to seven days. These penalties may be recovered by the Labor Commissioner or by an employee in a civil action.
- **Assembly Bill 2875 (Mathis) – Agricultural Worker Overtime** – Existing law, beginning in 2019, phases in daily overtime requirements for persons “employed in an agricultural position.” This bill defines that term to set forth a list of occupations that fall within the meaning of the term.
- **Assembly Bill 2946 (Kalra) – DLSE Discrimination Complaints** – Under current law, an employee that believes they have been discharged or discriminated against in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with DLSE within six months after the occurrence. This bill would extend that period to three years. This bill would also authorize an award of attorney’s fees to an employee who brings a successful action under Labor Code Section 1102.5, relating to whistleblower protections.
- **Senate Bill 1252 (Bradford) – Copy of Payroll Records** – This bill specifies that employees have the right to receive a “copy” of payroll records under current law.

Family Leave Proposals

Significant legislation related to family and medical leave issues includes:

- **Assembly Bill 2587 (Levine) – Paid Family Leave** – Under California’s paid family leave law, an employer may require an employee to take up to two weeks of unused vacation before, and as a condition of, receiving paid family leave benefits. This bill would eliminate the ability of employers to do so.
- **Senate Bill 1123 (Jackson) – Paid Family Leave** – This bill is a placeholder bill for now. However, the author has been quite active on family leave issues, including authoring last year’s SB 63 to provide “new parent leave” to employees of smaller employers. Therefore, it is likely that this bill will be amended into a significant proposal related to family leave. This bill should be watched closely.

Criminal Conviction History

Assembly Bill 2680 by Assemblyman Reggie Jones-Sawyer would require the Department of Justice (DOJ) to prepare a standard form for use by an employer seeking the consent of an applicant to conduct a conviction history background check by the DOJ. The bill would require an employer to use this form when seeking consent to run a background check on that applicant by the DOJ.

Public Sector Employers

Are you a public sector employer? Don't worry! You're not excluded from the action! Public sector labor organizations were active last year in enacting a public employee union orientation requirement, in anticipation of the pending *Janus v. AFSCME* case before the U.S. Supreme Court related to public employees and union dues. Their anticipatory action continues in 2018 as well.

Here's a list of proposed bills that would impact public sector employers:

- **Assembly Bill 2017 (Chiu) – Public Employee Organizations** – This bill prohibits a public employer from deterring or discouraging prospective public employees from becoming or remaining members of a union.
- **Assembly Bill 2154 (Bonta) – Release Time** – This bill would extend specified union “release time” provisions applicable to specified employees to all public employers and employees. It would require those public employers to grant a reasonable number of employee representatives reasonable time off without the loss of compensation to engage in specified activities.
- **Assembly Bill 2160 (Thurmond) – Part-Time Playground Positions** – This bill would make part-time playground positions part of the classified service.
- **Assembly Bill 2234 (Jones-Sawyer) – School Districts: Testimony of Child Witnesses** – Enacts a comprehensive set of requirements for the presentation of testimony by a child witness at dismissal or suspension proceedings relating to certificated school employees.
- **Assembly Bill 2481 (Voepel) – Infant at Work Program** – Authorizes a state agency to adopt an Infant at Work program to allow an employee of the agency who is a new parent or a caregiver to bring the infant to the workplace.
- **Assembly Bill 2778 (Carillo) – Public Safety Officers Procedural Bill of Rights** – This bill prohibits any punitive action, or denial of promotion on grounds other than merit, against any public safety officer without the public agency first taking into consideration education-based alternatives to that action.
- **Senate Bill 1456 (Morrell) – Providing Safe Schools Act of 2018** – This bill prohibits a school district from hiring a person involving direct contact with children if the person was determined to be responsible for an act of child abuse or sexual misconduct with a child. The bill also enacts other provisions related to the hiring process for positions involving direct contact with children.

Don't Forget About the Spot Bills!

But wait! There's more! In addition to the bills discussed above, there are dozens and dozens of "spot" bills that make only minor or technical changes to existing law. In the coming weeks and months, these bills often "blossom" into substantive proposals. So check back here often and we will keep you updated on any new significant bills that develop.

Conclusion

As is clear from the above discussion, 2018 is going to be a very active year in the California Legislature. Sexual harassment legislation is going to attract most of the headlines and garner much of the attention. But the significant bills mentioned above should not be overlooked. Check back here often for updates. If you have any questions about these or other legislative proposals, and how they might impact your business, don't hesitate to contact your Fisher Phillips attorney.

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