H.R. Alert
December 2014

2015 New Employment Laws

Wage and Hour

Assembly Bills

AB 326: Mandatory Reporting to OSHA

Employer must immediately report (phone or email) to the Division of Occupational Safety and Health a severe injury, illness or death. Other injuries must be reported within 5 days if they result in lost time beyond the date of injury or illness or require medical treatment that is more than just first aid. Penalty: $5,000 for failure to timely report.

AB 1443: Prohibits Discrimination and Harassment of Unpaid Interns and Volunteers

Court rulings in several other jurisdictions have suggested that unpaid interns and volunteers are not employees for purposes of harassment and discrimination laws. This bill amends FEHA to extend those protections to interns and volunteers. It amends Government Code section 12940(c) – which currently prohibits discrimination in apprentice training programs – to also preclude discriminating against interns and volunteers on the basis of any legally protected classification (e.g., race, religion, disability, etc.) and to prohibit sexual harassment of them, and to extend the existing religious belief accommodation requirements to them.

AB 1522: Paid Sick Leave, up to 3 Days Annually

AB 1522 (officially entitled The Healthy Workplaces, Healthy Families Act of 2014) requires California employers to pay employees for up to three days of sick leave per year, effective July 1, 2015. It adds new sections 245-249 to the California Labor Code. A quick summary of AB 1522 provisions:

- Most employees (exempt and non-exempt) who work in California for at least 30 days will be entitled to paid sick days at the employee's regular rate of pay. This includes temporary, part-time, and seasonal employees who work 30 or more days within a year from the date they are first hired.
- Paid sick days accrue at a rate of no less than one hour for every 30 hours worked. This equates to approximately 5.3 hours per month for employees who work 40 hours per week.
- An employer can limit an employee's use of paid sick days to 3 days (24 work hours) per year.
- An employee is entitled to use accrued sick days beginning on the 90th day of employment.
- Employers are prohibited from discriminating or retaliating against an employee who requests paid sick days.
- Employers must satisfy specified posting and notice and recordkeeping requirements.

See last month's H.R. Alert

AB 1559: Newborn Screening Program

Expands the state's newborn screening program to include adrenoleukodystrophy, once that screening becomes federally recommended.

AB 1660: FEHA Prohibits Discrimination based on Driver's License for Undocumented Workers

AB 1660 makes it a violation of the Fair Employment & Housing Act (FEHA) to discriminate against an individual because he/she holds a driver's license indicating the worker is undocumented. Last year California enacted AB 60 which authorized the Department of Motor Vehicles to issue a special driver's license to an undocumented person. AB 60 also amended California law to prohibit businesses from discriminating against individuals who hold or present such driver's licenses. This law amends the FEHA (Government Code section 12940 *et seq.*) to:

- prohibit discrimination against an individual because he or she holds or presents a driver's license; and
- prohibits an employer from requiring a person to present a driver's license, unless possessing a driver's license is required by the employer and the employer's requirement is otherwise permitted by law.

AB 1660 does not affect an employer's rights or obligations to obtain information required under federal law to determine identity and authorization to work. It does provide that driver's license information obtained by an employer shall be treated as private and confidential; and exempt from disclosure under the California Public Records Act; and shall not be disclosed to any unauthorized person or used for any purpose other than to establish identity and authorization to drive.

AB 1723: Penalties for Minimum Wage Violations to Include Waiting Time Penalties

Labor Code section 1197.1 lists various statutory penalties against employers who fail to timely pay wages of a resigned or discharged employee. Specifically, it authorizes employees to recover a civil penalty (as specified), restitution of wages, and liquidated damages. There are three ways to pursue such violations (e.g., through a "Berman Hearing" before the Labor Commissioner, through a civil action, or through a Labor Commissioner citation), but waiting time penalties under section 203 were available only under the first two methods (i.e., not for Labor Commissioner Citations). AB 1723 amends the law to authorize waiting time penalties for Labor Commissioner Citations as well.

AB 1792: Public List of Employers with 100 or more Employees Enrolled in Medi-Cal

AB 1792 requires the Department of Finance to obtain information from the Employment Development Department (EDD) and to post on its website (from January 2016 – January 2020) a list of employers with 100 or more employees who are enrolled in the Medi-Cal program. The information posted also will include the total average cost of state and federal benefits provided to each such employee. This bill also adds Government Code section 13084 prohibiting employers from: (1) discharging, discriminating, or retaliating against an employee who enrolls in Medi-Cal; (2) refusing to hire a beneficiary of Medi-Cal; or (3) disclosing to any person that an employee receives or is applying for Medi-Cal, unless authorized by state or federal law.

AB 1897: Employers Jointly Liable with Labor Contractors for Violations

Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract does not include sufficient funds for the contractor to comply with applicable laws or regulations (e.g., minimum wage and workers' compensation requirements).

AB 1897 requires a "client employer" to share liability with a labor contractor for the payment of wages, the failure to obtain valid workers' compensation coverage, and all legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. The new requirements do not apply to employers who have fewer than 25 employees or who hire fewer than 5 employees from the labor contractor. Additionally, the bill exempts from the definition of "labor contractor" specified nonprofit, labor, and motion picture payroll services organizations and 3rd parties engaged in an employee leasing arrangement, as specified.

Employers and labor contractors who are subject to AB 1897 cannot waive its provisions (the bill specifies that this would be contrary to public policy, void, and unenforceable), but AB 1897 also specifies that it does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies for violations of its provisions by the other party. AB 1897 adds new Section 2810.3 to the Labor Code.

AB 1962: MLR Reports for Dental Plans

Requires medical loss ratio reports from dental health plans detailing the percentage of money spent on administration and the percentage spent on actual care.

AB 2053: Expands AB 1825 Training to Include Prevention of "Abusive Conduct" (Bullying)

This bill is often referred to as the "anti-bullying" law. It does not actually amend the law to prohibit "abusive conduct", but only to require that existing "sexual harassment" training include training on prevention of "abusive conduct". Sexual harassment training is required by AB 1825 (enacted in 2004), which requires employers with more than 50 employees to provide at least two hours of sexual harassment training for supervisors located in California.

AB 2053 defines abusive conduct as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests." Abusive conduct "may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance." AB 2053 also specifies that "a single act shall not constitute abusive conduct, unless especially severe and egregious."

AB 2536: Time Off for Emergency Rescue Personnel

Labor Code section 230.3 prohibits an employer from discharging or in any manner discriminating against an employee for taking time off to perform emergency duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel. This bill expands the existing definition of "emergency rescue personnel" to include an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. An employee who is a health care provider must notify their employer at the time they become designated as emergency rescue personnel, and when the employee is notified they will be deployed because of that designation.

AB 2617: Limits Use of Arbitration Agreements

This bill limits employers' use of arbitration agreements with employees. Employers often require new hires to sign agreements that they will use arbitration rather than litigation or filing complaints with government agencies in the event of an employment dispute. This bill prohibits employers from requiring employees to waive certain legal rights and agree to arbitrate instead, and also prohibits businesses from refusing to contract with individuals who refused to waive such legal rights. AB 2617 amends Civil Code sections 51.7, 52, and 52.1 and applies to any contracts entered into, modified, or extended after January 1, 2015. I plan to research this new bill to determine the ramifications to our existing Arbitration Agreements.

Senate Bills

SB 964: Regulatory oversight of Network Adequacy

SB 964 addresses the issue of "narrow networks" and is intended to increase oversight of insurers and HMOs, including annual reviews of Medi-Cal managed care plans, to ensure that patients have timely access to medical services. It requires health care service plans, as part of their annual reports, to submit data regarding network adequacy to DMHC, and requires DMHC to review that data for compliance with the Knox-Keene Act and to post its findings on its Internet Web site. The various aspects of network adequacy include waiting times for appointments with physicians; timeliness of care and referrals and obtaining other services if needed; and waiting time to speak with a physician, registered nurse or other health professional.

SB 1004: Medi-Cal Plans to Offer Palliative Care

Requires the state to establish standards and help make sure Medi-Cal managed care plans offer palliative care services.

SB 1034: Eliminates California Waiting Periods

Prohibits group health insurance policies and HMO contracts from imposing any waiting or affiliation period upon any individual. The intent and practical effect of SB 1034 is that California health insurance plans will be subject to the Affordable Care Act (ACA) limits on eligibility waiting periods. The ACA limits the maximum eligibility waiting period to 90 days, and also allows a maximum one-month orientation period immediately before the waiting period. Prior California law (AB 1083) had limited the waiting period to 60 days. SB 1034 requires plans to provide a notice to eligible employees or dependents informing them that they may be excluded from eligibility for coverage until the next open enrollment period if they do not enroll when they are first eligible

SB 1052: Drug Formulary Template

Requires the California Department of Managed Health Care and the Department of Insurance to develop a uniform template for insurers to use when they share drug formularies. The agencies have until Jan. 1, 2017, to create the standardized template, at which point the formularies must be updated every month. Additionally, the law requires the Covered California board to:

- Create a search tool on the site for consumers to compare health plans' cost and coverage of particular drugs; and
- Provide Web links on the exchange website to health plans' drug formularies.

SB 1446: "Grandmothering" of Non-ACA Compliant Small Group Policies

Allows a small group health care service plan (HMO) contract or health insurance policy that was in effect on December 31, 2013, and was still in effect on July 7, 2014, and that does not qualify as a grandfathered health plan under PPACA, to be renewed until January 1, 2015, and to continue to be in force until December 31, 2015. This is often referred to as "grandmothering." Exempts such contracts and policies from various provisions of state law that implement PPACA reforms for small group plans and requires that the contracts and policies be amended to comply with those provisions by January 1, 2016, in order to remain in force on and after that date. This takes effect immediately as an urgency statute.

Within the next three days I will be receiving comprehensive information about an employer's 2015 obligations under ACA. If you have more than 50 employees this applies to you. Please let me know if you would like a copy of the information.