
EMPLOYMENT LAWS FOR 2019

As is always the case this time of year, Governor Brown has signed and vetoed a number of bills that will impact the landscape for California employers. Below are some of the laws taking effect in 2019 that employers should be aware of.

Assembly Bill 1976 – Lactation Accommodation.

By this point, California employers are familiar with their obligations to accommodate a female employee that wishes to express breastmilk. This new law revises existing lactation accommodation law to require an employer to take reasonable efforts to provide a location other than a bathroom for expressing breast milk. Prior law merely required an employer to provide a location other than a toilet stall. While the new law specifies that it should be a permanent location, it may be a temporary location if (1) the employer is unable to provide a permanent location due to operational, financial, or space limitations; (2) the temporary location is private and free from intrusion while being used for lactation purposes; and (3) the temporary location is not used for other purposes while being used for lactation.

Assembly Bill 2282 – Salary History.

This bill is intended to clean up ambiguities in AB 168. The California Labor Code will now specify that employers may inquire about an applicant's salary expectations for the position being applied for. Additionally, external applicants (not current employees) are entitled to a pay scale upon request, but only after completing an initial interview.

Assembly Bill 2770 – Defamation Protection.

This bill will protect employers and victims of sexual harassment from liability for defamation

lawsuits for injury to an alleged harasser's reputation after a complaint of sexual harassment has been made. An employee who makes credible reports of harassment will be shielded from liability, as will an employer who communicates with interested parties such as victims and witnesses. Importantly, an employer will now be permitted to reveal that an individual is not eligible for rehire because the employer determined that he/she engaged in sexual harassment.

Assembly Bill 2587 – Paid Family Leave, Waiting Period.

This bill amends section 3303.1 of the Unemployment Insurance Code to delete application of vacation to the seven (7) day waiting period previously required before obtaining PFL benefits. This bill removed the vacation requirement consistent with the January 1, 2018, removal of the waiting time requirement in its entirety. An employer is still permitted to require an employee to take up to two (2) weeks of vacation.

Assembly Bill 3109 – Waiver of Right of Petition.

This bill makes void and unenforceable a provision in a contract or settlement agreement which waives a party's right to testify in an administrative, legislative or judicial proceeding concerning alleged criminal conduct or sexual harassment.

Senate Bill 820 – Confidentiality Clauses in Settlement Agreements.

This law prohibits any settlement agreement in a case where sexual harassment, assault, gender discrimination or related retaliation has been alleged and filed in court or before an administrative agency, from including a confidentiality provision that prohibits disclosure of factual information

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regarding the claim. The parties may still agree to keep the amount of the settlement confidential and the settlement agreement may include a provision that limits the disclosure of the claimant's identity or facts leading to the discovery of the claimant's identity.

Senate Bill 1123 – Paid Family Leave.

Paid Family Leave, partial wage replacement through the state, shall be expanded for use beginning January 1, 2021, to employees who take time off for reasons associated with being called to active duty or a spouse, domestic partner, parent or child being called to active duty.

Senate Bill 1300 – Amendments to Fair Employment and Housing Act (FEHA).

This bill amends FEHA to (1) make it unlawful for an employer to require an employee to release FEHA claims in exchange for a bonus, raise or continued employment; (2) make employers liable for unlawful harassment by non-employees (not just for sexual harassment) where the employer knew or should have known of the harassment and failed to take action; and (3) clarify legislative intent to create a lower bar for employees to bring harassment lawsuits and limit the ability of employers to obtain summary judgment in sexual harassment cases.

Senate Bill 1343 – Sexual Harassment Training.

Beginning in January 1, 2020, the sexual harassment training requirement will be expanded to all employers with five (5) or more employees. Such employers will be required to provide two (2) hours of sexual harassment training to supervisors and one (1) hour to non-supervisory employees within six (6) months of hire or promotion and every two (2) years after that. Senate Bill 1343 also requires the Department of Fair Employment and Housing ("DFEH") to develop and post training

materials for employers to use in order to satisfy these requirements.

Senate Bill 826 – Gender Composition of Board of Directors.

This new law requires the mandatory inclusion of women on corporate boards of directors. By the end of 2019, publicly traded California companies will be required to appoint a certain number of women to their boards of directors. Covered corporations will need at least one (1) female on their boards by the end of 2019. Boards with five (5) directors will need two (2) female directors and boards with six (6) or more directors will need three (3) females by the end of 2021.

Senate Bill 1252 – Payroll Records.

This bill clarifies that an employer must provide copies of payroll records within 21 days of the request; not merely provide the employee with the opportunity to copy the payroll records themselves.

Each of these bills impacts employers throughout California. However, given the recent #MeToo movement, sexual harassment has become an issue that many employers are having to address more often than in previous years. Additionally, with the new requirements for sexual harassment training, decreasing the minimal number of employees that triggers the sexual harassment training requirement and mandating training for non-supervisory employees, every employer will need to address training. If you have questions regarding this or any of the laws that will be going in to effect, please contact us.

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