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## California Legislative Update: Which Bills Made the Final Cut?

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Although the California Legislature sent Governor Jerry Brown bills on bed bugs, powdered alcohol, and making denim the official state fabric, the laws enacted in 2016 affecting the state's private-sector employers were decidedly less exotic.

Governor Brown ended his workweek on September 30, 2016, by signing and vetoing the last of the hundreds of bills that the Legislature had passed and sent to his office in the waning weeks of the 2016 legislative session, which ended in August. This year, he signed or otherwise let take effect 892 of the approximately 1,059 bills that made their way to his desk, and vetoed the balance (159, or about 15%).<sup>1</sup>

The following are this year's major legislative developments affecting employment law for California private-sector employers.<sup>2</sup> Unless otherwise noted, all new laws become effective January 1, 2017.

### The Big Ones

#### *Minimum wage*

On April 4, 2016, Governor Brown signed **Senate Bill (SB) 3**, which will eventually raise the statewide minimum wage to \$15 per hour. The amended law provides for six stepped annual statewide increases of the current minimum wage of \$10 an hour, starting on January 1, 2017, for employees working for employers of 26 or more employees. The increases

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1 This has generally been Governor Brown's veto rate in his second administration. For comparison, the recent high veto rate was that of Governor Schwarzenegger in 2008 (35%), and the low, Governor Brown in 1982 during his first administration (2%).

2 The text of all bills, along with their committee and floor reports, votes, and additional resources, are available at <http://leginfo.legislature.ca.gov>.

are delayed for one year for employers of 25 or fewer employees. The measure also provides for indexing future increases, and expands the state's existing paid leave statute.<sup>3</sup>

#### *Equal pay*

**Assembly Bill (AB) 1676** specifies that prior salary cannot, by itself, justify any disparity in compensation between men and women. **SB 1063** prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work. *Amends Labor Code sections 1197.5 and 1199.5.*

#### *Notifications and postings*

**AB 2337** requires employers to inform each employee of his or her employment leave rights as a possible victim of domestic violence, sexual assault, or stalking, by providing that information in writing to new employees upon hire, and to other employees upon request. The bill would also require the Labor Commissioner, by July 1, 2017, to post on its website a form that an employer may elect to use to comply with these provisions. Employers would not be required to comply with the notice of rights requirement until the Commissioner develops and posts the form. *Amends Labor Code section 230.1.*

#### *Restrictions on employment contracts*

**SB 1241** prohibits an employer from requiring a California employee to adjudicate outside of California a claim arising in California. The new statute makes any provision of a contract that violates these prohibitions voidable, upon request of the employee, and requires a dispute over a voided provision to be adjudicated in California under California law. The statute specifies that injunctive relief is available and authorizes a court to award reasonable attorneys' fees. Adjudication includes litigation and arbitration for purposes of the statute, but a contract with an employee who was represented by legal counsel is exempted from the statute. *Adds new Labor Code section 925.*

#### *Restrictions on use of applicant's juvenile court history*

**AB 1843** prohibits employers from asking an applicant for employment to disclose information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. Employers are also prohibited from using such information as a factor in determining any condition of employment. *Amends Labor Code section 432.7.*

#### *Required employee retirement saving through employers*

**SB 1234** provides legislative approval for the California Secure Choice Retirement Savings Program (SCRSP; additional information available [here](#)) and sets forth recommendations and requirements for the design and implementation of that program. In its current form, Secure Choice would apply to private-sector employers, with five or more employees, that do not offer an employer-sponsored retirement plan. Employers that fit this definition will be required to either offer an employer-sponsored retirement plan or to automatically

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<sup>3</sup> For more information on SB 3, see Christopher Cobey and Sebastian Chilco, [California Raises its Minimum Wage and Expands Paid Sick Leave](#), Littler ASAP (Apr. 4, 2016).

enroll their employees in Secure Choice by creating a payroll contribution to the employee's personal Secure Choice Retirement account. Employers would have minimal administrative responsibilities. They would only be required to: (1) enable employees to make an automatic contribution from their paycheck into their Secure Choice Account; (2) transmit the payroll contribution to a third-party administrator to be determined by the Board; and (3) potentially provide state-developed informational materials about the program to their employees. *Amends, repeals, and adds 20 sections of the Government, and Welfare and Institutions, Codes.*

#### *Agricultural industry*

**AB 1066**, although it affects only a portion of the California private-sector workforce, represents a historic policy change. The "Phase-In Overtime for Agricultural Workers Act of 2016" removes the exemption for agricultural employees regarding hours, meal breaks, and other working conditions, including specified wage requirements, and creates a schedule that phases in overtime requirements for agricultural workers during 2019 to 2022.<sup>4</sup> Employers that employ 25 or fewer employees will have an additional three years to comply with the phasing in of these overtime requirements. Beginning January 1, 2022, the statute requires any work over 12 hours in one day performed by a person employed in an agricultural occupation be compensated at the rate of no less than twice the employee's regular rate of pay. The statute authorizes the Governor to delay the implementation of these overtime-pay provisions if the Governor also suspends the implementation of a scheduled state minimum wage increase. The statute also requires the Department of Industrial Relations to update Wage Order 14 for consistency with these provisions. *Amends Labor Code section 554; adds Labor Code sections 857-864.*

## Other New Laws

#### *Agricultural industry*

**SB 702** extends, until January 1, 2022, a Lake County-specific exemption of child labor law that allows minors to work during the peak agricultural season when school is not in session. *Amends Labor Code section 1393.5.*

#### *All-Gender Bathrooms*

**AB 1732** requires, commencing March 1, 2017, all single-user toilet facilities in any business establishment, place of public accommodation, or government agency to be identified as all-gender toilet facilities. The new statute authorizes inspectors, building officials, or other local officials responsible for code enforcement to inspect for compliance with these provisions during any inspection. (California law already prohibits discrimination against transgender people, including restrictions on the use of public restrooms.) *Adds Health and Safety Code section 118600.*

#### *Apprenticeship*

**AB 2288** requires that the California Workforce Development Board and each local board ensure, to the maximum extent feasible, that federal Workforce Innovation and Opportunity Act of 2014 funds awarded for pre-apprenticeship training in the building and construction trades fund programs and services that: (1) follow the Multi-Craft Core Curriculum implemented by the State Department of Education; and (2) develop a plan for outreach and retention for women participants to help increase the representation of

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<sup>4</sup> A previous bill (AB 2757) by the same author on the same subject was defeated in the Assembly on June 2 on a 38-35 vote (41 votes required for passage). AB 1066 bill was created by the gut-and-amend process on June 14.

women in the building and construction trades. The bill's listed source is the State Building and Construction Trades Council, AFL-CIO. *Amends Unemployment Insurance Code section 14230.*

**AB 1926** mandates, when a contractor requests the dispatch of an apprentice to perform work on a public works project and requires compliance with certain pre-employment activities as a condition of employment, that the apprentice be paid the prevailing rate for the time spent on any required pre-employment activity, including travel time to and from the activity, if any, except as specified. *Amends Labor Code section 1777.5.*

#### *Arbitration*

**SB 1007** allows a party to an arbitration proceeding the right to have a court reporter during the arbitration proceeding. *Adds Code of Civil Procedure section 1282.6.*

#### *Care facilities*

**AB 2231** increases the civil penalties for specified violations and adopts penalties for repeat violations in licensed community care facilities, including, but not limited to, residential care facilities for persons with chronic life-threatening illnesses, residential care facilities for the elderly, day-care centers, and family day-care homes. *Amends, repeals, and adds ten sections to the Health and Safety Code.*

#### *Child care service providers*

**AB 2036** requires an online child-care job posting service to post specified statements related to background checks and a parent's right to complaint information on its website. The new law also authorizes a civil penalty for violations of these requirements. *Adds Business and Professions Code section 11890-18890.6.*

#### *Commuter benefits*

**SB 1128** removes the January 1, 2017, sunset provision from a program requiring certain employers in the San Francisco Bay Area to offer alternative-commute benefits to their employees. *Amends Government Code section 65081.*

#### *DFEH investigations*

**SB 1442**, which was sponsored by the Department of Fair Employment and Housing (DFEH), requires, among other actions, the DFEH (instead of the Secretary of the Health and Human Services Agency) to investigate and enforce the laws prohibiting discrimination in the conduct, operation, or administration of state or state-funded programs or activities on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, and to issue rules and regulations. The bill would consolidate in the DFEH the authority to promulgate rules and regulations for various antidiscrimination statutes in the codes. *Adds, amends, and repeals 12 sections, and a chapter, of the Education and Government Codes.*

#### *Disability terminology*

**AB 1709** modernizes various codes referencing "deaf or hearing impaired" individuals by replacing existing references to "hearing impaired" with "hard-of-hearing." *Amends multiple sections of multiple codes.*

*Domestic workers*

**SB 1015** would delete the January 1, 2017, repeal date of the Domestic Worker Bill of Rights. *Repeals Labor Code section 1453.*

*Electronic wireless communications*

**AB 1785** reaffirms the state's prohibition on using a handheld wireless telephone or wireless electronic communication device while driving, but authorizes a driver to operate such devices under certain circumstances. Specifically, drivers are permitted to use their finger to activate or deactivate a feature or function of the device with a single swipe or tap, so long as the device is mounted in a location that does not obstruct the driver's field of vision. *Repeals and adds Vehicle Code section 23123.5.*

*Employment discrimination*

**AB 488** authorizes individuals employed under a special license in a nonprofit sheltered workshop or rehabilitation facility to sue under the Fair Employment and Housing Act (FEHA) for prohibited harassment or discrimination. *Amends Government Code section 12926, and adds Government Code section 12926.05.*

**AB 1687** prohibits a commercial online entertainment employment service provider that enters into an agreement to provide certain employment services from publishing information about the subscriber's age in an online profile of the subscriber. This bill, sponsored by the Screen Actors Guild, also requires a service provider to remove within five days the subscriber's date of birth and age information in an online profile from public view on any companion Internet websites under its control upon request by the subscriber. *Adds Civil Code section 1798.83.5.*

*Government contractors and prevailing wages*

**AB 326** requires that funds held as collateral by the Department of Industrial Relations (DIR) pending a prevailing wage proceeding be released back to the contractors who deposited them within 30 days of the conclusion of the proceeding. *Amends Labor Code section 1742.1.*

**AB 626** establishes until January 1, 2020, a claims resolution procedure by which a general contractor can seek public-agency review of a claim in connection with a public works project. The procedure applies to public-works contracts entered into on or after January 1, 2017. *Repeals and adds Public Contracts Code section 9204.*

**AB 1669** extends to contractors and subcontractors submitting bids for contracts for the collection and transportation of solid waste, the existing 10% bidding preference for public transit service contractors and subcontractors that agree to retain employees of the previous contractor for a period of at least 90 days. The bill was sponsored by the California Teamsters Public Affairs Council. *Adds Labor Code sections 1075 and 1076, and amends sections 1070, 1071, and 1072.*

**AB 2844** requires a person who submits a bid or proposal to, or otherwise proposes to enter into or renew a contract of \$100,000 or more with a state agency, to certify, under penalty of perjury, their compliance with the Unruh Civil Rights Act and the FEHA, and that any policy against a sovereign nation or peoples, including, but not limited to, the nation and people of Israel, are not used to discriminate in violation of those laws. *Adds Public Contract Code section 2010.*

**AB 2126** authorizes the Department of Transportation to use the construction-manager/general-contractor method on 12 projects, and would require eight out of the 12 projects to use department employees or consultants under contract with the Department to perform all project design and engineering services. *Amends Public Contract Code section 6701.*

**AB 2551** authorizes alternative contracting methods for surface-storage projects that receive Proposition 1 funding and conditions the use of alternative project-delivery methods on meeting specific solicitation, qualification, and selection requirements. *Adds Public Contract Code sections 20928 through 20928.4.*

**SB 693** consolidates the "skilled and trained workforce" requirements of various provisions of existing law related to alternative construction delivery methods, defines the terms of these requirements, and makes other conforming changes. The source of the bill was the State Building and Construction Trades Council. *Amends, repeals, and adds ten sections in three different codes.*

**SB 1214** extends the termination date, to January 1, 2018, on the authority of the University of California to use the best-value procurement method at all its campuses and medical centers. *Amends and repeals four sections and a heading of the Public Contract Code.*

#### *Health and safety*

**SB 1167** requires the Division of Occupational Safety and Health, by January 1, 2019, to propose to the Occupational Safety and Health Standards Board for the board's review and adoption, a heat-illness and injury-prevention standard applicable to workers working in indoor places of employment. The new statute specifies this requirement does not prohibit the division from proposing, or the standards board from adopting, a standard that limits the application of high-heat provisions to certain industry sectors. *Adds Labor Code section 6720.*

#### *Health professionals*

**SB 1139** prohibits a student, including a person without lawful immigration status or a person who is exempt from nonresident tuition, who meets the requirements for admission to a medical degree program at any public or private postsecondary educational institution that offers such a program, or who meets the requirements for admission to a healing arts residency training program whose participants are not paid, from being denied admission based on his or her citizenship or immigration status. The new statutes prohibit specified grant and loan-forgiveness programs from denying an application based on an applicants' citizenship or immigration status. *Adds Business and Professions Code sections 2064.3 and 2064.4, and Health and Safety Code section 128371.*

#### *Janitorial industry*

**AB 1978** implements new registration, recordkeeping and sexual harassment prevention training requirements for certain janitorial industry employers. The new law will cover approximately 220,000 California employees in this sector. The Division of Labor Standards Enforcement (DLSE) will enforce the new laws, and the Labor Commissioner is authorized to adopt any regulations necessary to carry out the provisions of the bill. Effective July 1, 2018, every janitorial employer must register annually with the Labor Commissioner under prescribed procedures. Janitorial employers are prohibited from conducting any business without registration. The Commissioner is authorized to revoke a registration under certain circumstances. The new law sets application and renewal fees for registration. The Commissioner must maintain on the department's website a public database of registered property service employers. The new

law also requires every janitorial employer subject to its provisions to keep, for three years, accurate records of specific information regarding employees. By January 1, 2019, the Division must establish a biennial, in-person sexual violence and harassment prevention training requirement for employees and employers with the assistance of a prescribed advisory committee to be convened by the director. By July 1, 2018, and until the division establishes that training requirement, employers are required to provide employees with a DFEH pamphlet on sexual harassment. The new law establishes civil fines for specific violations of its provisions and vests in the Fair Employment and Housing Commission the exclusive authority to enforce the civil fine provisions. This law's publicly-stated co-sources are SEIU California and Equal Rights Advocates. *Adds Labor Code sections 1420 – 1434.*

#### *Labor Commissioner rulings; appeal; bond requirement*

**AB 2899** requires a person seeking a writ of mandate contesting the Labor Commissioner's ruling on an employer's non-payment of a minimum wage to post a bond with the Labor Commissioner, in an amount equal to the unpaid wages assessed under the citation, excluding penalties. The amended statute requires that the bond be issued for the unpaid employees, and ensures that the person seeking the writ makes prescribed payments under the proceedings. The proceeds of the bond, sufficient to cover the amount owed, would be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings. *Amends Labor Code section 11971.*

#### *Nail salons*

**AB 2437** requires an establishment licensed by the Board of Barbering and Cosmetology (BBC), on and after July 1, 2017, to post a model notice pertaining to workplace rights and wage and hour laws, developed by the Chief of the Division of Labor Standards Enforcement (Labor Commissioner), and requires the BBC to inspect for compliance with the posting requirement. *Adds Business and Professions Code section 7353.4, and Labor Code section 98.10.*

**AB 2025** updates the Barbering and Cosmetology Act (Act) to ensure that the Board of Barbering and Cosmetology (BBC) offers all written materials provided to licensees and applicants in English, Spanish, Korean, and Vietnamese. The BBC must also provide practitioner and establishment applicants with information about basic labor laws, and include basic labor law information in health and safety curriculum taught in BBC-approved schools. All amendments will become operative July 1, 2017. The source of the bill was the California Healthy Nail Salon Collaborative. *Amends Business and Professions Code sections 7312, 7314, 7314.3, 7337, 7347, and 7389.*

#### *Postings and notifications*

**AB 2532** repeals the existing requirement that every community action agency, or any private organization contracting with a state or local government agency that provides specified employment services, to post in a prominent location in the workplace a notice stating that only citizens or those persons legally authorized to work in the United States may use the agency's or organization's employment services funded by the federal or state government. *Repeals Unemployment Insurance Code sections 9601.5 and 9601.7.*

**AB 1847** requires some employers that must notify employees who may be eligible for the federal earned-income tax credit to also notify these employees they may be eligible for the California Earned Income Tax Credit under the same conditions. *Amends Revenue and Taxation Code sections 19851, 19852, 19853, and 19854.*



### *Smoking in the workplace*

**SBX2-5**, among other provisions, extends workplace smoking prohibitions of “tobacco products” to include electronic cigarettes. *Repealed, amended, and added 25 sections in eight codes.*

### *Unemployment insurance appeals*

**AB 2886** extends the California Unemployment Insurance Appeals Board appeals window for State Disability Insurance and Paid Family Leave benefits from 20 to 30 days. *Amends, repeals, and adds six sections of the Unemployment Insurance Code.*

### *Unfair immigration-related practice*

**SB 1001** makes it unlawful for an employer to request more or different documents than are required under federal law, to refuse to honor documents tendered that on their face reasonably appear to be genuine, to refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work, or to reinvestigate or re-verify an incumbent employee’s authorization to work. The new statute authorizes an applicant for employment or an employee subject to an unlawful act prohibited by these provisions, or a representative of that applicant or employee, to file a complaint with the Division of Labor Standards Enforcement. The new statute specifies that any person who violates these provisions will be subject to a penalty not to exceed \$10,000, and equitable relief. *Adds Labor Code section 1019.1.*

## **What Significant Employment Bills Were Vetoed or Died?**

**SB 654** was gutted and amended<sup>5</sup> on August 11, converting it from a two-year bill on toxic wastes to a reiteration of 2015-2016’s SB 1166, which died July 1 for failing to meet a necessary deadline. This bill would have created the “New Parent Leave Act,” which would have prohibited an employer from refusing to allow an employee with over 12 months of service with the employer, and who had at least 1,250 hours of service with the employer during the previous 12-month period, to take up to six weeks of parental leave to bond with a new child within one year of the child’s birth, adoption, or foster care placement. The bill would also have prohibited an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave. The California Chamber of Commerce designated the bill a “job killer.” The Governor vetoed the bill on the last day he could act on the bill.<sup>6</sup>

**AB 1643** would have prohibited apportionment of workers’ compensation awards in cases of physical injury based on pregnancy, menopause, osteoporosis, and carpal tunnel syndrome, and would have required that breast cancer receive not less than the comparable impairment rating for prostate cancer.<sup>7</sup>

**AB 67**, dubbed the “Double Pay on the Holiday Act of 2016,” failed in its second try to make it through the Legislature. It would have required an employer to pay at least two times the regular rate of pay to employees at certain retail and grocery store establishments, except employees in specified categories, for work on a family holiday.

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5 “When amendments to a bill remove the current contents in their entirety and replace them with different provisions.” [California State Legislature, Glossary of Legislative Terms.](#)

6 His veto message expressed concern about the bill’s impact on small businesses, and added: “As I understand, an amendment was offered that would allow an employee and employer to pursue mediation prior to a lawsuit being brought. I believe this is a viable option that should be explored by the author.”

7 The Governor’s message explaining his reasons for vetoing AB 1643 was among the longest veto messages he issued this year. (Veto message available at <https://www.gov.ca.gov/news.php?id=19574>).



**AB 1890**, the Equal Pay for Equal Work Act of 2016, would have required an employer with a state contract that amounted to \$50,000 or more that either was required by federal regulations to submit a federal nondiscrimination report, or had 100 or more employees in the state, to submit an annual report to the DFEH that included summary data on the compensation paid to employees, sorted by gender and race, and a description of the employer's policies designed to ensure pay equity and prevent unlawful discrimination. The Governor's veto message said that he did "not believe this bill is necessary."

### **The Other Kind of Lawmaking**

Although there are 16 initiatives and one referendum on the California statewide November 2016 general election ballot, none deal directly with workplace issues.<sup>8</sup>

The text of the propositions and the referendum are available [here](#).

In local elections, voters in San Jose will pass judgment on an initiative titled "Opportunity To Work" (Measure E), which would require employers of 36 or more employees to offer additional work hours to existing qualified part-time employees before hiring new employees or contractors, unless waived through a collective bargaining agreement or a welfare-to-work program.

### **What Can California Private-Sector Employers Expect from the Legislature in 2017?**

As the partisan composition of the State Legislature is not expected to change, nor will the Governor, California private-sector employers can expect more of the same as seen in this year's legislative session: further expansion of employees' rights in the workplace and stiffer penalties for employer noncompliance.

- In particular, look in 2017 for legislative proposals concerning:
- Predictive work scheduling, especially for overtime-eligible retail employees of larger stores and business.
- Addition of more protected categories to California's equal pay statute.
- Prohibition on requiring applicants to submit salary history.
- Greater investigative, enforcement and disciplinary powers for the Department of Fair Employment and Housing, the Department of Labor Standards Enforcement, and the California Occupational Safety and Health Division (Cal/OSHA).

In addition, many of California's nearly 500 cities and 58 counties will likely continue generating their own local employment laws.

In the meantime, employers with operations in California should consider reviewing and updating their employee handbooks and, if necessary, policies and procedures, that are affected by these new laws.

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<sup>8</sup> See Jennifer L. Mora, *California's Recreational Marijuana Initiative Is Not Expected To Impact Employer Workplace Drug Policies*, Littler ASAP (Aug. 5, 2016). An initiative raising the minimum wage was withdrawn by its sponsors in late June, presumably because of the Legislature's passage in April of a bill raising it.