

PREPARE FOR 2017 EMPLOYMENT LAW UPDATE PDF



2017 CALIFORNIA EMPLOYMENT LAW CHANGES

(Nov. 5, 2016. Thanks to our team member Lauren Mead for doing the major portion of the work on this project. Please visit our website at www.calworksafety.com for additional information.)

2016 brought us many changes in California employment law, including new provisions for paid sick leave and minimum wage increases for a large number of cities in the state of California.

Summary of Important Topics You Must Know!

1. Check your list of [Salaried or Exempt](#) employees. Are they paid enough under the new standards as of December 1, 2016 to qualify as "exempt" per Federal FLSA rules meaning paid at least \$47,476 per year. Even so, are they really performing "exempt" activities at least 50% of their working time?
2. Verify you are paying all employees at least the [Applicable Minimum Wage](#). And be aware of what city or county your employees are working in - because there are differing minimum wages, as well as paid sick leave rules, in dozens of California cities and some counties.
3. In recruiting and hiring, are you careful to ask only lawful questions, including not asking about [Juvenile Criminal History](#). Revise your employment application forms and background check procedures.
4. Update your [New Hire Checklist](#) to provide required notices to new hires, including [Leave of Absence](#) information for victims of sex crimes, sexual abuse or stalking. Use the [New I-9 Forms](#) as soon as issued (any day now) and check only proper documentation.
5. Review your policy on Cell Phone Use which is going to require keeping hands off the cell phone - use a holder.

Please note references: throughout this publication, SB = Senate Bill, and AB = Assembly Bill.

[PAY AND BENEFITS](#)

INCREASES FOR STATE MINIMUM WAGE (Effective January 1, 2017)

SB 3 increases the statewide minimum wage* to \$15 per hour in increments over the course of 5 years—from January of 2017 to January of 2022—with cost of living increases scheduled annually thereafter. Businesses with 25 or fewer employees will receive a one year delay on the increases. The legislation also allows for future increases to the state minimum wage based on the Consumer Price Index. The minimum wage increase will also affect the required Minimum Wage Order that all employers must post. 2017 California and Federal Employment Notices poster will contain the required Minimum Wage Order.

*Several cities and counties - Long Beach, Los Angeles City, Los Angeles County, Malibu, and Santa Monica - have adopted their own minimum wage.

2017-23 CA/Federal Suggested Minimum Wage Schedule

Date	Employers - 26 (+) Employees	Employers - 25 (-) Employees
01/01/2017	\$10.50 per hour	\$10.00 per hour
01/01/2018	\$11.00 per hour	\$10.50 per hour
01/01/2019	\$12.00 per hour	\$11.00 per hour
01/01/2020	\$13.00 per hour	\$12.00 per hour
01/01/2021	\$14.00 per hour	\$13.00 per hour
01/01/2022	\$15.00 per hour	\$14.00 per hour
01/01/2023	\$15.00 per hour	\$15.00 per hour

NEW FEDERAL SALARY REQUIREMENTS (Effective December 1, 2016)

Although this change is not unique to California, please bear in mind the Federal changes made to “white collar” exemptions, known as the “Final Rule”, which takes effect on December 1, 2016. The Department of Labor (DOL) issued changes that substantially increase the minimum salary requirement for the executive, administrative, and professional employee exemptions, under the Fair Labor Standards Act (FLSA). The new minimum will be \$913 per week (or \$47,476 per year).

FAIR PAY ACT CHANGES (Effective January 1, 2017)

Under the Fair Pay Act, which went into effect on January 1, 2016, existing law generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. The Fair Pay Act provides for exceptions such as, the wage differential is based upon one or more of the following factors: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; (d) a bona fide factor other than sex, such as education, training, or experience.

- SB 1063 expands the Fair Pay Act beyond gender wage inequality to include employees’ race or ethnicity.
- AB 1676 amends the Fair Pay Act to provide that prior salary cannot, by itself, justify any disparity in compensation. The law is intended to “help ensure that both employers and workers are able to negotiate and set salaries based on the requirements, expectations, and qualifications of the person and the job in question, rather than on an individual’s prior earnings, which may reflect widespread, long-standing, gender-based wage disparities in the labor market.”

WAGE STATEMENT CHANGES (Effective January 1, 2017)

AB 2535 amends California Labor Code Section 226, which specifies information to be included on an employee’s itemized wage statement (pay stub). Currently the requirement does not apply to certain salaried, exempt employees. The amendment clarifies that employers are not required to display total hours worked during the pay period for exempt employees who are paid by means other than salary, including outside salespersons and computer professionals. Employers must continue to include the total hours worked by non-exempt employees in the itemized wage statements for each pay period.

PRIVATE RETIREMENT SAVINGS PLANS (Effective TBD)

Though the program is not officially up and running, we want you to be aware: SB 1234 approves the California Secure Choice Retirement Savings Program (SCRSP), which is a state-run retirement plan for private sector workers. Specific prerequisites must be met before the SCRSP can be implemented.

Under the legislation, employers with five or more employees that do not offer specified retirement plans must put a payroll arrangement into place so that employees may contribute a portion of their salary or wages to a retirement saving program in the SCRSP. Employers retain the right at all times to set up and offer their own qualified retirement plan.

HIRING PRACTICES

CRIMINAL HISTORY INQUIRIES ON EMPLOYMENT APPLICATIONS (Effective January 1, 2017)

AB 1843 prohibits employers from inquiring into an applicant's juvenile convictions or using such convictions as a factor in any condition of employment.

For health care facilities, AB 1843 allows employers to request the applicant to disclose a juvenile adjudication for a felony or misdemeanor for a sexual offense or drug possession that was rendered within the prior five years. However, as with other employers, that applicant would not have to disclose any juvenile adjudications for arson, murder, kidnapping, assault with a firearm, discharge of a firearm and numerous other serious felony offenses.

Under existing laws, an employer cannot ask an applicant about an "arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law."

We highly recommend using our updated employment application, or updating your existing employment application, to ensure you are in compliance with this change.

IMMIGRATION-RELATED UNFAIR PRACTICES (Effective January 1, 2017)

Employers are required by federal law to verify an employee's eligibility to work using the Form I-9 process. Under federal law, it is unlawful for employers to ask for more or different documentation than is required by the Form I-9, refuse to accept documents that appear genuine on their face or engage in other types of document abuse. SB 1001 makes this type of conduct unlawful under state law as well. The legislation gives the Labor Commissioner power to enforce the law and specifies a penalty of up to \$10,000 as well as the ability to issue orders to stop further violations. This new state law may provide an easier remedy than federal law for workers who believe they have had their rights violated.

HIGHER PENALTIES FOR HIRING UNAUTHORIZED WORKERS

Employers face significant increases in civil monetary penalties for knowingly employing an unauthorized worker and for certain other immigration-related violations, including paperwork violations, under a U.S. Department of Justice interim rule that took effect on August 1, 2016, and applying to violations occurring after November 2, 2015.

In addition to the above changes, a new form I-9 is under development. Our team can assist you with performing an I-9 audit and help you identify and resolve any errors or gaps in the forms to bring your I-9 records into compliance with the requirements of Federal law.

VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING (Effective July 1, 2017)

Existing California law provides employees who are victims of domestic violence, sexual assault, and/or stalking the right to take time off from work in specified circumstances. AB 2337 will now require employers, with 25+ employees, to give new employees written notice of these rights upon hire and to provide notice to current employees upon request.

The bill also requires the Labor Commissioner, by July 1, 2017, to prepare a form notice for employers to use to satisfy the requirements of this new law. Employers are not required to comply with the notice requirements until the Labor Commissioner's notice form is posted on its website.

WORKPLACE CHANGES

- **SMOKING IN THE WORKPLACE (Effective June 9, 2016)**
 - ABX2-7 amends California Labor Code Section 6404.5 by expanding prohibitions against smoking in the workplace. The expansion covers owner-operated businesses, even where the owner is the only worker present. It also bans smoking in hotel lobbies and meeting rooms, warehouses, bars, and employee break rooms.
- **SINGLE-USER RESTROOMS (Effective March 1, 2017)**
 - AB 1732 requires that all **single-user toilet facilities** in any business establishment, place of public accommodation or government agency must be identified as “all-gender” toilet facilities. Inspectors or other building or local officials responsible for code enforcement will be authorized to inspect for compliance.

SAFETY & WORKERS' COMPENSATION

Several bills relating to workers' compensation were signed into law in 2017:

AB 2883 Clarifies that owners or officers of businesses who receive pay from the business may be excluded from coverage under the workers' compensation policy but only if they are owners of at least 15% of the stock of the entity and are specifically excluded under the policy in writing.

SB 1175 attempts to expedite payment of workers' compensation claims by requiring medical providers to submit bills for medical services to employers within one year of the date of service.

INDOOR HEAT ILLNESS (Effective January 1, 2019)

Though not an immediate change, a very important one that we want you to be aware of: SB 1167 requires Cal/OSHA to propose a heat-illness and injury prevention standard for indoor workers by January 1, 2019. The bill does not specify what provisions will be included in the new rule or what types of workplaces will be covered — potentially the new rule could include all indoor workplaces, including air conditioned offices.

USING ELECTRONIC DEVICES WHILE DRIVING

AB 1785 clarifies rules relating to the use of wireless electronic devices while driving. The existing law is amended to authorize drivers to use their hand to activate or deactivate a feature or function of the device with a single swipe or tap, as long as the device is mounted so as not to hinder the driver's view of the road.

As there are special provisions regarding the occupations below, if you need more information, please contact us regarding the following:

Private School Teachers

Agricultural Workers**

Domestic Workers

Temporary Security Guards

Hair Salons/Nail Salons

Janitorial Employers

Ride sharing services

** Transition to overtime after 8 hours/day and 40 hour/week over the next few years.

Employers need to be aware of these new provisions.

Since there are a number of complex changes in the 2017 EMPLOYMENT LAW, please contact us to ensure that your Policies are compliant and your Employee Handbooks are up to date.

Call 949-533-3742, email: DonDressler1@hotmail.com, or visit: www.calworksafety.com