

New Laws & Rules for California Employers for 2018

Courtesy of CalWorkSafety.com

Summary:

Minimum Wage:

- Large businesses with 26 or more employees began complying January 1, 2017. The current minimum wage for large businesses is \$10.50 per hour; the rate will increase to \$11.00 per hour on January 1, 2018. Large businesses will reach the \$15 per hour minimum wage in 2022.
- Small businesses with 25 or fewer employees had a one-year delay and will see their first minimum wage increase on January 1, 2018; the minimum wage will increase from \$10.00 per hour to \$10.50 per hour. Do not forget that many cities and some counties have local minimum wage ordinances as well - most of these call for increases on July 1, 2018.

When hiring: Salary History do not ask an applicant for employment their salary history, either on an application form or in an interview or otherwise; upon request you must provide the pay scale to an applicant for the position they are applying for.

When hiring - regarding criminal history: If an employer has 5 or more employees, it is unlawful to inquire about criminal or conviction history of an applicant until after a conditional offer of employment to the applicant; If you obtain or review information (which can only relate to conviction history, not juvenile criminal history or actions related to marijuana offenses more than 2 years old) and intend to deny an applicant employment based even in part on such conviction history, you must document that you have made an individual assessment whether the conviction history has a direct and adverse relationship with the specific duties of the job justifying denying the applicant the position. Consideration must include: nature and gravity of the offense, time that has passed, nature of the job; If you have made a preliminary decision not to employ an applicant based on conviction history, the applicant must be notified of the decision in writing, given a copy of the history report, notice of a right to respond, and have 5 days to respond. If told by the applicant that he/she disputes the accuracy of the report, the applicant has 5 additional days to respond to the notice. Any final decision by the employer must be in writing.

What to do regarding Immigration I 9 forms: Do not allow any government entity, and specifically DO NOT ALLOW the Customs & Immigration Service, or U.S. Homeland Security to obtain or review your records UNLESS provided a Notice of Inspection; If you receive a Notice of Inspection for I 9 forms, you must post a notice for employees immediately informing them that the process will occur. If the I 9 review raises questions about any particular employee's status, that employee must be informed and allowed to participate to clarify their status. Also, employers can only "reauthorize" a I 9 form as required by the process.

Employment Policies - Reproductive Health Rights: Employees have the right to and freedom to make personal decisions regarding reproductive health including the timing of use of birth control drugs and devices, or medical services. These rights are now protected by the Equal Employment provisions of California law and employers may not discriminate on the basis of employee decisions. Employee handbooks must also contain a notice of employee rights and remedies regarding this matter.

New Parent Leave Act: Employers who have from 20 to 49 employees as of January 1, 2018 will be required to allow qualified employees to take unpaid leave for up to 12 weeks to bond with a new child within 1 year of a child's birth, adoption or placement for foster care. There are qualifications such as the employee must have completed 1,250 hours of work for the company within the past year, and work at a location where there are at least 20 employees within 75 miles of the worksite. This leave is in addition to pregnancy leave, which can be for up to four months, and employees are entitled to continuation of health benefits during this leave.

Harassment Training Regarding Gender Identity, Expression and Sexual Orientation: Training which is required regarding prevention of sexual harassment and bullying behavior now must include training inclusive of harassment based on gender identity, gender expression and sexual orientation, in the training all employers with 50 or more employees must provide supervisors and managers for two hours every two years.

Farm Labor Contractors: Sexual Harassment Training: SB 295 makes several additions to the law that governs obtaining and renewing a farm labor contractor (FLC) license. Specifically, this bill requires:

1. That sexual harassment prevention training for each agricultural employee be given in the language understood by that employee;
2. That, as part of their license renewal application, FLCs provide the Labor Commissioner (LC) with a complete list of all materials or resources used to provide sexual harassment prevention training to their employees in the prior year;
3. That, as part of their license renewal application, FLCs also include the total number of agricultural employees trained in sexual harassment prevention in the prior year.

1. When hiring: Salary History

What - when hiring - regarding salary information

- o do not ask an applicant for employment their salary history, either on an application form or in an interview or otherwise.
- o upon request you must provide the pay scale to an applicant for the position they are applying for.

How:

- Revise your application form to comply with 2018 California laws (CalWorkSafety.com can provide). Ask all applicants to complete an application to insure compliance.)
- Have a system to review the basics every time you recruit for a position which asks key questions including job duties and qualifications to allow you to determine an appropriate pay scale. (CalWorkSafety can assist you.)

Why: AB 168, Employers and Salary Information added CA Labor Code Section 432.3 as of 1/1/2018 which provides that an employer shall not rely on salary history of an applicant for employment in determining whether to offer employment or what salary. Also no employer may seek salary history information including compensation or benefits from an applicant for employment. However, any applicant for employment must provide the pay scale for a position upon request to a job applicant.

2. When hiring: Criminal History

What - When hiring - regarding criminal history

- If an employer has 5 or more employees, it is unlawful to inquire about criminal or conviction history of an applicant until after a conditional offer of employment to the applicant.
- If you obtain or review information (which can only relate to conviction history, not juvenile criminal history or actions related to marijuana offenses more than 2 years old) and intend to deny an applicant employment based even in part on such conviction history, you must document that you have made an individual assessment whether the conviction history has a direct and adverse relationship with the specific duties of the job justifying denying the applicant the position.
- Consideration must include: nature and gravity of the offense, time that has passed, nature of the job.
- If you have made a preliminary decision not to employ an applicant based on conviction history, the applicant must be notified of the decision in writing, given a copy of the history report, notice of a right to respond, and have 5 days to respond.
- If told by the applicant that he/she disputes the accuracy of the report, the applicant has 5 additional days to respond to the notice. Any final decision by the employer must be in writing.

How:

- Revise your application form to comply with 2018 California laws (CalWorkSafety.com can provide). Ask all applicants to complete an application to insure compliance.)
- If you plan to conduct a criminal conviction background check, 1- use a qualified vendor with appropriate notification and authorization forms; 2- prior to conducting a background check, working with a human resources specialist or attorney, determine the business needs and relationship to the job duties for the background check.
- If a report causes you to consider denying employment, have assistance in making an appropriate determination for the reason for declining employment and the notification process.
- Have a specific new hire process in writing which complies with the procedure for background and reference checks.

Why:

- Effective 1/1/2018 California will enforce AB 1008, which added Government Code Section 12952 making it an unlawful employment practice for any employer with 5 or more employees to seek disclosure of a job applicant's criminal conviction history, or to deny employment based on criminal history without making an individual assessment on specific basis and providing notice and a opportunity to respond to the job applicant.

3 - What to do regarding Immigration I 9 forms:

What: Follow the procedures for Immigration I 9 forms carefully, do not ask current employees to fill out new forms after having once completed forms at time of hire, have all new employees use the current I 9 form (latest form was issued 7/11/2017) and complete Section 1 of the form no later than the first day of work.

- DO NOT suggest or require any particular or specific form of identification. If in doubt, rely on the instruction sheets of the I 9 forms or contact an employment attorney.
- Record the expiration date of appropriate documents provided by new employees, and follow up for re-verification prior to the expiration date of those documents.
- Carefully review the originals of any documents submitted by new employees, record the required data, and complete all spaces on the I 9 form or enter not applicable if appropriate.

- Do not allow any government entity, and specifically DO NOT ALLOW the Customs & Immigration Service, or U.S. Homeland Security to obtain or review your records UNLESS provided a Notice of Inspection.
- If you do receive a Notice of Inspection - you have a right to 3 days and you should always demand that time. If you get a notice - you are strongly advised to have assistance of experienced legal or human resources consultants prior to the 3 day period for furnishing the I 9 forms required by such Notice. You are required to require a search warrant or subpoena for any other access to your records or working areas of your business.
- If you receive a Notice of Inspection, you must post a notice for employees immediately informing them that the process will occur.
- If you undergo an I 9 document audit or inspection, and have notice of potential deficiencies, you must provide written notice of such potential deficiencies to any employees affected.

How: Make sure that all employees who have responsibility for your premises and employee records are aware of the requirements of Immigration Law, the I 9 process, and this new California law which restricts access to work places and employee records without search warrants or subpoenas.

- If you receive a Notice of Inspection for I 9 forms, you must post a notice for employees immediately informing them that the process will occur.
- If the I 9 review raises questions about any particular employee's status, that employee must be informed and allowed to participate to clarify their status.
- Also, employers can only "reauthorize" an I-9 form as required by the process. CalWorkSafety.com strongly encourages all employers to self audit or have outside help in auditing their I 9 forms prior to January 1, 2018. Our experience in auditing I 9 forms indicates that quite often there is a "error" rate of 25% or more in I 9 forms, most of which are simple or unintended errors which can be quickly corrected if identified.
- It is not clear if the new California law will approve of these self-audits after 1/1/2018, although nothing in the law details such prohibition and the fines from Customs & Immigration Service are for \$225.00 or more if they find such errors in I 9 forms.

Why: California enacted AB 450 which added Section 7285.1 to the Government Code which prohibits employers (all private and public employers) from cooperating with any federal immigration authorities - other than complying with the Notice of Inspection of I 9 forms and the follow up process.

4. Employment Policies - Reproductive Health Rights

What: Employees have the right to and freedom to make personal decisions regarding reproductive health including the timing of use of birth control drugs and services, medical services. These rights are now protected by the Equal Employment provisions of California law and employers may not discriminate on the basis of employee decisions. Employee handbooks must also contain a notice of employee rights and remedies regarding this matter.

How: Employee handbooks, by January 1, 2018, need to be revised to include notice of the employee right to freedom to make independent reproductive health decisions and freedom from interference from employers. Employees have right protected by the Fair Employment and Housing Act. (CalWorkSafety can assist employers in reviewing their employee handbook for compliance with this and other laws.)

Why: California enacted AB 569 which added Section 2810.7 to the Labor Code establishing protection for employee freedom to make reproductive health decisions, and required employment handbooks to include notice of these employee rights and remedies.

5. New Parent Leave Act

What: Employers who have from 20 to 49 employees as of January 1, 2018 will be required to allow qualified employees to take unpaid leave for up to 12 weeks to bond with a new child within 1 year of a child's birth, adoption or placement for foster care.

- There are qualifications such as the employee must have completed 1,250 hours of work for the company within the past year, and work at a location where there are at least 20 employees within 75 miles of the worksite. This leave is in addition to pregnancy leave, which can be for up to 4 months, and employees are entitled to continuation of health benefits during this leave.

How: This New Parent Leave, also known as "baby bonding leave" makes available unpaid leave similar to leave available to employees of companies with over 50 employees, but does not extend all of the other unpaid leave provisions of Family Medical Leave. Employees (male or female) who take this new parent leave are protected in returning to their job when the leave is over.

- When adding together the 4 months of pregnancy leave and the almost 4 months of baby bonding leave, an employee may have

significant time away from a job, and an employer may be challenged in having a temporary replacement.

Why: New California Government Code Section 12945.6 was added by SB 63.

6. Harassment Training Regarding Gender Identity, Expression and Sexual Orientation

What: Training which is required regarding prevention of sexual harassment and bullying behavior now must include training inclusive of harassment based on gender identity, gender expression and sexual orientation, in the training all employers with 50 or more employees must provide supervisors and managers for 2 hours every 2 years. New supervisors and managers must be trained within the first 6 months in their new responsibilities.

How: Employers with 50 or more employees should be familiar with and regularly scheduling training regarding sexual harassment. Recently the training was required to be expanded to include training on bullying behavior. Now, new material or training will be required in 2018 for training on the issues of sexual orientation and gender identity and gender expression. The training needs to include practical examples of such harassment and presented by trainers with knowledge and experience in these areas. (CalWorkSafety consultants have been and are trained and present programs which qualify for these requirements).

Why: California amended its Government Code Section 12950 which requires every employer to ensure a workplace free of sexual harassment by implementing posters, and for employers with 50 or more employees - all supervisory employees must receive 2 hours of training every 2 years on the laws prohibiting sexual harassment, which now also require training on harassment based on gender identity, expression and sexual orientation. Such training shall include practical examples and be presented by trainers with expertise in the area.

7. Farm Labor Contractors: Sexual Harassment Training

What: **SB 295** makes several additions to the law that governs obtaining and renewing a farm labor contractor (FLC) license. Specifically, this bill requires:

1. That sexual harassment prevention training for each agricultural employee be given in the language understood by that employee;
2. That, as part of their license renewal application, FLCs provide the Labor Commissioner (LC) with a complete list of all materials or resources used to provide sexual harassment prevention training to their employees in the prior year;
3. That, as part of their license renewal application, FLCs also include the

total number of agricultural employees trained in sexual harassment prevention in the prior year.

How: Farm Labor Contractors will need to obtain sexual harassment training material or programs for all employees and include training and document such training as part of their new hire practice, along with heat illness and other regular new hire procedures.

Why: SB 295 amends California Labor Code Section 1684 to require as part of his or her application for license renewal, in order to establish that training is occurring, a licensee shall provide the Labor Commissioner with a complete list of all materials or resources utilized to provide sexual harassment prevention training to his or her agricultural employees in the calendar year prior to the month the renewal application is submitted; the total number of agricultural employees trained in sexual harassment prevention in the calendar year prior to the month the renewal application is submitted; and it is a violation of the law to fail to provide such training, keep a record of such training and to fail to provide employees with a record of training or the Department of Fair Employment and Housing sexual harassment pamphlet.

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