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The 2018 Legal Landscape for California Lodging Properties: What New Employment Laws Take Effect

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- Defends employers in individual and collective actions at both the federal and state levels, including matters related to the FEHA, FMLA/CFRA, whistleblowing and wage and hour violations.
- Represents employers in inspections and enforcement actions involving Cal/OSHA.
- Counsels employers on compliance with federal, state and local laws including issues related to hiring, discipline, internal investigations, leaves of absence and terminations.

Agenda

- Wave of New State Employment Laws and Regulations
- New Municipal Employment Ordinances
- Takeaways for California Lodging Properties



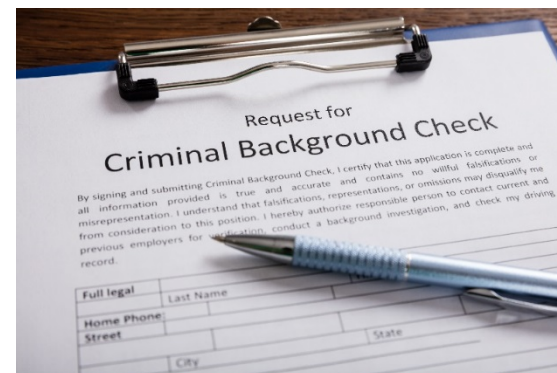
Major California Employment Laws Effective 2018

Statewide “Ban the Box” Law (AB 1008)



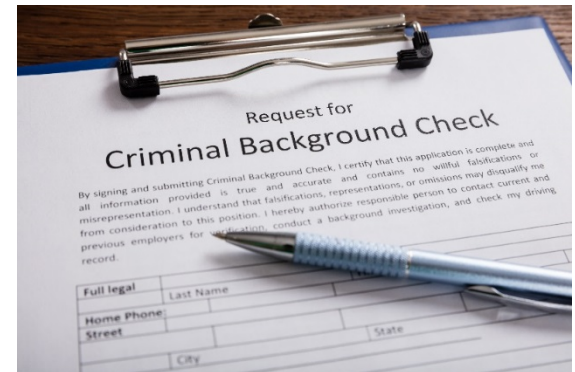
Statewide “Ban the Box” Law (Cont.)

- Limits inquiry into an applicant’s criminal history
 - Unlawful for an employer to inquire into or consider an applicant’s criminal history *before* the employer has made a conditional offer of employment
 - Includes job applications and any verbal inquiry
 - Law applies to employers with five or more employees



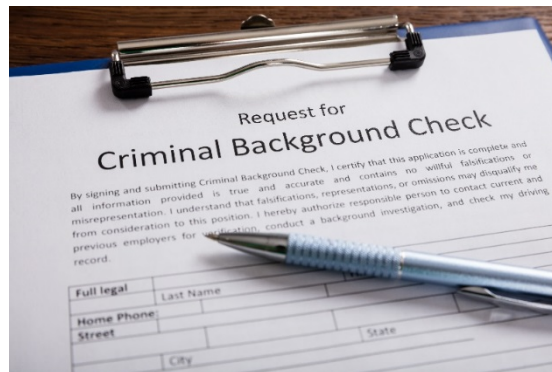
Statewide “Ban the Box” Law (Cont.)

- Before denying an applicant a position because of the applicant’s conviction history:
 - Employer must make an individualized assessment of whether the applicant’s conviction history has a “direct and adverse relationship” with the specific duties of the applied for position.
- Factors to be considered in the assessment:
 - The nature and gravity of the offense or conduct;
 - The time that has passed since the offense/sentence; and
 - The nature of the job held or sought.



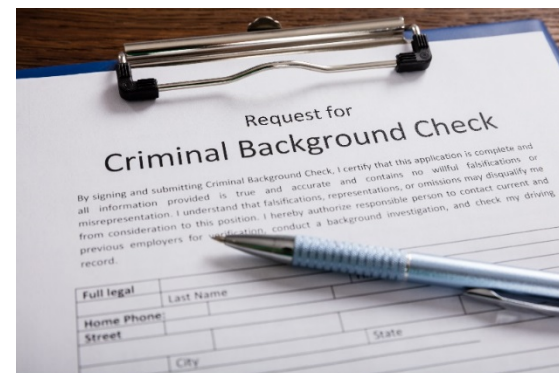
Statewide “Ban the Box” Law (Cont.)

- Requires written notice of the preliminary decision that the applicant’s conviction history disqualifies him or her from employment.
 - Applicant is allowed at least five business days to respond.
 - Employer must consider the applicant’s response.



Statewide “Ban the Box” Law (Cont.)

- Employer’s final decision must:
 - Be in writing
 - Disclose the decision
 - Disclose the employer’s existing procedures for challenging the decision or requesting reconsideration
 - Disclose the applicant’s right to file a complaint with the California Department of Fair Employment and Housing.



Consideration of Job Applicants' Salary History (AB 168)



Consideration of Job Applicants' Salary History (AB 168)

- Bars employers from seeking salary history information from a job applicant
- Employers prohibited from relying on an applicant's salary history in determining whether to offer employment or what salary to offer

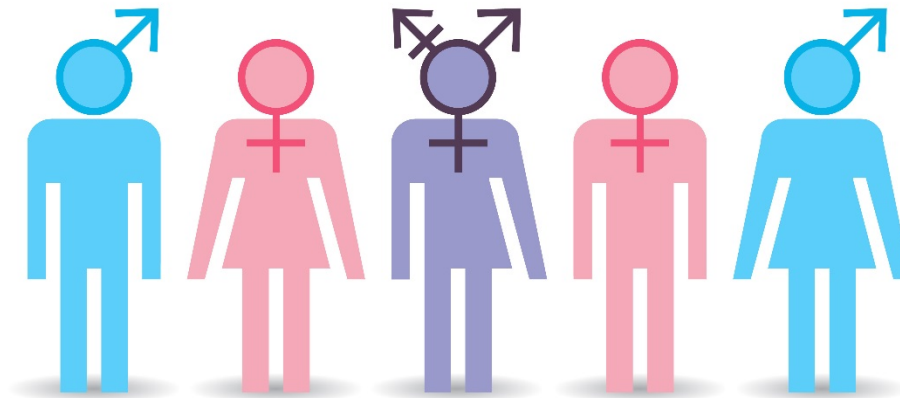


Consideration of Job Applicants' Salary History (Cont.)

- Employer may consider salary history disclosed “voluntarily and without prompting”
- Employers must now provide, “upon reasonable request,” the pay scale for the position at issue



California Regulations Expand Protections for Transgender Workers



Recognition of Transition Discrimination

- FEHA addresses gender identity and gender expression discrimination of an employee or applicant for employment
- New regulations make it unlawful to discriminate against an individual:
 - who *is* transitioning;
 - *has* transitioned;
 - or is *perceived* to be transitioning.



Recognition of Transition Discrimination

➤ Transitioning means

- a process some transgender people go through to begin living as the gender with which they identify
- *for example*, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities, or undergoing hormone therapy, surgeries or other medical procedures



Recording of Gender and Name

- Require employers to abide by an employee's request to be identified with a preferred gender, name, or pronoun
 - ***But*** employer is permitted to use an employee's gender or legal name as indicated in a government-issued identification document as necessary to meet a legally-mandated obligation



Recording of Gender and Name

- Prohibits employers from requiring an applicant or employee to disclose whether the individual is transgender on job applications
- Can employers communicate with an employee about the employee's gender, gender identity or gender expression?
 - only once the employee “initiates communication with the employer regarding the employee's working conditions”



Grooming and Dress Standards

- Unlawful for an employer to impose upon an applicant or employee any physical appearance, grooming or dress standard that is “inconsistent with an individual’s gender identity or gender expression”
 - ***Unless*** the employer can establish a business necessity defense.



Access to Bathrooms and Other Facilities

- Employers must permit an employee to use bathrooms and other facilities that correspond to the employee's "gender identity or gender expression, regardless of the employee's assigned sex at birth"
 - An employer may not require an employee to use a particular facility
 - Employers are required to provide "feasible alternatives" to protect transgender employees' privacy such as locking toilet stalls, staggered schedules for showering and shower curtains

Access to Bathrooms and Other Facilities

- Employer may make a “reasonable and confidential inquiry” for the sole purpose of ensuring access to comparable, safe and adequate multi-user facilities
 - But may not require employee to provide proof of any medical treatment or procedure
 - But may not require employee provide any identity document, to use facilities designated for use by a particular gender



Access to Bathrooms and Other Facilities

- Signage for single-user toilet facilities, must be identified as all-gender toilet facilities under a new law (AB1732) that was effective March 1, 2017.
 - Regulations provide that employers must use gender-neutral signage for these facilities with terms such as “Restroom,” “Unisex,” “Gender Neutral,” or “All Gender Restroom.”



Supervisor Training on Gender Identity and Sexual Orientation Harassment (SB 396)



Supervisor Training on Gender Identity and Sexual Orientation Harassment

- Existing law requires employers with 50 or more employees to provide all supervisors two hours of training regarding sexual harassment
 - within six months of becoming a supervisor, and at least once every two years thereafter.
- SB 396 additionally requires employers to include discussion of harassment based on gender identity, gender expression and sexual orientation
 - training must be performed by an individual with knowledge and expertise in these areas, and must include practical examples.



Supervisor Training on Gender Identity and Sexual Orientation Harassment (Cont.)

- As of January 1, 2018, employers are required to affix a poster developed by the California Department of Fair Employment and Housing (DFEH) regarding transgender rights in a prominent and accessible location in the workplace.



Other New Employment Laws



Immigration Worksite Enforcement (AB 450)

- Existing California law prohibits employers from engaging in “unfair immigration-related practices,” in retaliation for protected activity
- New law precludes employers from
 - voluntarily cooperating with an immigration agency in worksite enforcement actions
 - providing voluntary consent to an immigration enforcement agent entering nonpublic work areas unless the agent provides a judicial warrant
 - providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer’s employee records without a subpoena or court order

Immigration Worksite Enforcement (AB 450)

- Employer must post notice of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency
 - within 72 hours of receiving notice of the inspection
- Employer is required to provide affected employees, or their authorized representatives, a copy of immigration agency's notice re the results of the inspection of these records
 - within 72 hours of receipt of the notice



Immigration Worksite Enforcement (AB 450)

- CA Labor Commissioner and the AG have exclusive authority to enforce these provisions, and may recover penalties
 - \$2,000 to \$5,000 for a first violation
 - \$5,000 to \$10,000 for each subsequent violation



Labor Commissioner Investigations (SB 306)

- Authorizes the Division of Labor Standards Enforcement (DLSE) to commence an investigation into suspected retaliation with or without receiving a complaint.
- Previously, the DLSE had jurisdiction only after receiving an employee complaint.



Labor Commissioner Investigations (Cont.)

- Upon finding reasonable cause to believe a violation occurred, the Labor Commissioner may petition the superior court for
 - injunctive relief for an employer to hire, promote or otherwise restore an employee/former employee
 - recover monetary penalties and the agency's reasonable attorney's fees and costs.

Parental Leave for Small Employers (SB 63)

- Parental leave law applying to businesses
 - with 20 or more employees **and**
 - not subject to the California Family Rights Act (CFRA) and the federal Family and Medical Leave Act (FMLA)
- A covered employer must provide, upon an eligible employee's request
 - up to 12 weeks of unpaid parental leave within one year of the child's birth, adoption, or foster care placement



Parental Leave for Small Employers (Cont.)

- To be eligible for this parental leave, the employee must:
 - Have 12 months of service with the employer
 - Have at least 1,250 hours of service with the employer during the previous 12-month period **and**
 - Work at a worksite in which the employer employs at least 20 employees within 75 miles
- The eligible employee may use any accrued vacation pay, paid sick time or other accrued paid time off during the parental leave.

Parental Leave for Small Employers (Cont.)

- Employee's health insurance must be paid during parental leave
 - ***But*** employer may recover the premium payments if the employee fails to return to work after the leave expires, for “a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control”



New Municipal Minimum Wage Rates

Minimum Wage

- As of January 1, 2018, the state's minimum wage will be \$10.50 per hour for employers with 25 or fewer employees and \$11 per hour for employers with 26 or more employees.
- The following municipalities have enacted minimum wage ordinances that exceed the state minimum:

CITY	CURRENT STANDARD MINIMUM WAGE
Berkeley	\$13.75
Cupertino	\$13.50
El Cerrito	\$12.25
Emeryville	\$14.00 (55 or fewer Employees), \$15.20 (56 or more)

Other Cities

CITY	CURRENT STANDARD MINIMUM WAGE
Los Altos	\$13.50
Los Angeles	\$10.50 (25 or fewer employees), \$12.00 (26 or more employees)
Malibu	\$12.00
Milpitas	\$12.00
Mountain View	\$15.00
Oakland	\$13.23
Palo Alto	\$13.50
Pasadena	\$10.50 (25 or fewer employees), \$12.00 (26 or more employees)

Other Cities



CITY	CURRENT STANDARD MINIMUM WAGE
Richmond	\$13.41
Santa Clara	\$13.00
San Diego	\$11.50
San Francisco	\$14.00
San Jose	\$13.50
San Leandro	\$12.00
San Mateo	\$13.50
Santa Monica	\$10.50 (25 or fewer employees), \$12.00 (26 or more employees)
Sunnyvale	\$15.00

New Municipal Ordinances

New Municipal Ordinances: San Francisco



- Effective July 1, 2018, SF employers prohibited from inquiring into or considering current or past salary of a job applicant in determining whether to hire/determine salary
- Effective January 1, 2018, the San Francisco Paid Parental Leave ordinance applies to employers with 20 or more employees.
- Lactation in the Workplace ordinance requires employers to provide breaks and a location for employees to express milk. Mirrors state law but with notable exceptions.

New Municipal Ordinances: Los Angeles



- The City of Los Angeles' paid sick leave ordinance has applied to employers with 25 or fewer employees since July 1, 2017.
- The City of Los Angeles has also passed a “ban the box” ordinance, enforced by the City since July 1, 2017.

Takeaways for California Employers

Takeaways for California Lodging Properties

- Modify job application forms
 - Remove any inquiry into the applicant's criminal history, or salary history
 - Defer any inquiry into criminal history, or any request for a criminal background check verifying criminal history, until *after* a conditional job offer has been made



Takeaways for California Employers

- Update employee handbooks
 - Incorporate an equal employment opportunity policy stating a broad prohibition against transition discrimination
 - Identify procedures for transgender employees to request access to facilities corresponding to their gender identity
 - Incorporate policies on parental leave for small employers and as otherwise necessitated by new municipal ordinances



Takeaways for California Employers

- Train managers and supervisors on proper hiring procedures
 - including refraining from inquiring into job applicants' past salary and criminal history before the conditional offer
 - consider conducting refresher training on permissible interview questions under the FEHA, the anti-discrimination statutes



Takeaways for California Employers

- Train supervisor on gender identity concerns including that supervisors should refer to transgender employees by their preferred name, gender and pronoun
- Consider requests for changes in working conditions, ideally by referring such matters to Human Resources.



Takeaways for California Employers

- Develop internal procedures for handling investigations or inspections by the immigration authorities or the California Labor Commissioner
 - including proper protocols should this occur

- Update the sexual harassment training for supervisors
 - include a component on harassment based on gender identity/ expression and sexual orientation.



QUESTIONS



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