

# An Overview of New 2014 Laws Affecting California Employers

**By: CalChamber Employment Law Counsel**

Once again, California enacted many new employment laws that will affect California employers' day-to-day operations and policies in 2014.

Some of the new laws for 2014 make significant changes in key areas, such as a new minimum wage, new protections for immigrants and expanded leaves of absence. Other new laws make small changes to different parts of existing law or relate to specific industries, such as garment manufacturers or the car wash industry.

Unless specified, all new legislation goes into effect on **January 1, 2014**.

This white paper identifies some of the noteworthy new laws from the California Legislature.

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## Wage and Hour

Several new laws will increase employers' wage and hour obligations in 2014.

### Minimum Wage

AB 10 raises California's current minimum wage of \$8 per hour by two, one-dollar increments: to **\$9 per hour effective July 1, 2014**, and to **\$10 per hour effective January 1, 2016**. This is the first increase to the minimum wage since January 1, 2008.

### Domestic Work Employees

AB 241 enacts the Domestic Worker Bill of Rights which provides for specific overtime pay for certain in-home employees; a "domestic work employee who is a personal attendant." Those with in-home help will need to carefully determine whether the new law applies to them because AB 241 contains many specific definitions and exclusions.

The U.S. Department of Labor also issued new rules on personal attendants. However, the new federal rules do not take effect until **January 1, 2015**. California's rules take effect on **January 1, 2014**.

### Meal and Rest Periods – Expansion to Heat Illness Recovery Periods

SB 435 expands meal and rest break prohibitions to "recovery" periods taken to prevent heat illness. Under SB 435, an employer cannot require an employee to work during a recovery period mandated by state law under Cal/OSHA's heat illness standard.

An employer who does not provide an employee with a recovery period must pay the same premium penalty that exists for unprovided meal or rest breaks - one additional hour of pay for each workday that the meal, rest or recovery period is not provided.

Employers with outdoor places of employment are subject to Cal/OSHA's heat illness standard, which allows for cooldown periods in the shade of no less than five minutes at a time on an "as-needed" basis for employees to protect themselves from overheating.

### Damages for Minimum Wage Violations

AB 442 expands the penalty available for citations issued by the Labor Commissioner for failing to pay minimum wage to include a requirement that the employer pay liquidated damages to the employee, in addition to existing penalties.

## Protections for Exercising Rights Under Labor Code

AB 263 amends Labor Code section 98.6, which protects employees who assert their rights under the Labor Code; for example, by complaining of wage theft. AB 263 prohibits *retaliation* or *adverse action* against employees for exercising their rights under the Labor Code (current law only explicitly prohibits discharge and discrimination).

AB 263 also expands protected conduct under Labor Code section 98.6 to specifically include a written or oral complaint by an employee that he/she is owed unpaid wages.

Critically, AB 263 adds a civil penalty of up to \$10,000 per employee per violation of Labor Code section 98.6.

AB 263 is also discussed in the **Immigrant Protections** section on page six.

## Labor Commissioner Lien on Property for Employee Complaints

AB 1386 requires that the amount due under a Labor Commissioner order, decision or award that has become final shall create a lien that the Labor Commissioner may record on the employer's real property.

## Attorneys' Fees – Prevailing Party Wage Claims

SB 462 states that employers who win wage-claim lawsuits may recover attorneys' fees and costs from the employee only if a trial court finds that the employee filed the lawsuit in bad faith.

## Employee Wage Withholdings – Criminal Penalty

SB 390 creates a criminal penalty for an employer that fails to remit withholdings from an employee's wages that were made pursuant to state, local or federal law.

## Garment Manufacturer Requirements

AB 1384 creates a civil penalty for a garment manufacturer's failure to display his/her name, address and registration number at the front entrance of the premises.

## Car Wash Industry

AB 1387 increases the bond requirement for employers in the car wash industry from \$15,000 to \$150,000, but exempts an employer from the bond requirement if the employer has a collective bargaining agreement in place that meets specified criteria.

## Farm Labor Contractors – Successor Liability

SB 168 makes a successor farm labor contractor liable for wages or penalties owed by a predecessor farm labor contractor under certain specified circumstances.

## Prevailing Wages

A number of bills signed this year relate to prevailing wages. Employers who provide services or construction work for the government or public entities must pay the prevailing wage, which is usually significantly higher than the minimum wage.

The bills include AB 1336, SB 7, SB 54, SB 377 and SB 766. One notable bill (SB 54) expands payment of prevailing wages to *privately* financed refinery construction projects.

## **Discrimination and Retaliation Protections**

Several new laws will expand employee protections for 2014.

### **Protection for Military and Veterans**

AB 556 adds “military and veteran status” to the list of categories protected from employment discrimination under the Fair Employment and Housing Act.

### **Sexual Harassment Definition Clarified**

SB 292 amends the definition of harassment to clarify that sexually harassing conduct does not need to be motivated by sexual desire. The new law clarifies that hostile treatment can amount to unlawful sexual harassment regardless of whether the treatment was motivated by any sexual desire.

### **Whistleblower Protections**

Labor Code section 1102.5 provides whistleblower protections for employees who have reason to believe that their employer is violating a federal or state statute.

SB 496 expands whistleblower protections to include reports alleging a violation of a local rule or regulation. It also protects employees who disclose, or may disclose, information regarding alleged violations “to a person with authority over the employee or another employee who has authority to investigate, discover or correct the violation.”

Finally, SB 496 prohibits retaliation against an employee because the employer “believes the employee disclosed or may disclose information.”

## Immigrant Protections

Many new laws will affect immigrants in 2014. New protections will address retaliation against immigrant workers who complain about unfair wages or working conditions. Privileges such as drivers' licenses for undocumented immigrants were also extended.

### Retaliation and Unfair Immigration Practices

AB 263 prohibits an employer from engaging in "unfair immigration-related practices" when an employee asserts protected rights under the Labor Code. For instance, an employer may not threaten to contact, or contact, immigration authorities because an employee complained that he/she was paid less than the minimum wage.

AB 263 authorizes various penalties against employers who engage in unfair immigration-related practices, including a private right of action.

### License Revocation for Threatening to Report Immigration Status

SB 666 permits the state to suspend or revoke an employer's business license where that employer reports, or threatens to report, the immigration status of any employee because the employee makes a complaint about employment issues. It also allows for disbarment of attorneys for similar conduct against witnesses or parties in a lawsuit.

The law covers reports, or threats to report, employees, former employees, prospective employees or family members, as defined, to immigration authorities.

Employers are not subject to the suspension or revocation of a business license for requiring a worker to verify eligibility for employment under the *Form I-9*.

### Criminal Extortion for Threatening to Report Immigration Status

AB 524 clarifies that a person may be guilty of criminal extortion if the person threatens to report the immigration status or suspected immigration status of an individual, or his/her relative or a member of his/her family.

### Driver's License for Undocumented Immigrants

AB 60 requires the California Department of Motor Vehicles (DMV) to issue a driver's license to an undocumented person who can prove identity and California residency and who can meet all other licensing requirements, such as the written and behind-the-wheel exams.

The card will bear a notation stating that the card is not acceptable for federal purposes, such as verifying eligibility for employment. In other words, this card is not acceptable for *Form I-9* verification.

AB 60 does not take effect until **January 1, 2015**, or on the date the Department of Motor Vehicle's director executes a specified declaration, **whichever is sooner**. The DMV must adopt regulations to implement the new law, including documents acceptable for the purposes of proving identity and California residency, as well as procedures for verifying authenticity of documents.

## Leaves and Benefits

Several new laws will make changes to leaves of absence in California for 2014.

### Time Off for Crime Victims

SB 288 adds new protections for crime victims to take time off from work to appear in any court proceeding in which a right of the victim is at issue. The law applies only to specific crimes such as solicitation for murder and vehicular manslaughter while intoxicated.

Employees must comply with requirements for requesting the leave. Violations of the law will be enforced by the Labor Commissioner.

### Time Off for Victims of Stalking and Accommodation for Domestic Violence, Sexual Assault and Stalking Victims

SB 400 extends existing protections for victims of domestic violence or sexual assault to victims of stalking. Existing protections which will now be extended to stalking victims include time off to appear at legal proceedings (all employers) and to seek medical/psychological treatment, including safety planning (employers with 25 or more employees).

SB 400 also makes it unlawful to discriminate or retaliate against an employee because of his/her *status* as a victim of domestic violence, sexual assault or stalking.

SB 400 further adds a *new reasonable accommodation requirement* for victims of domestic violence, sexual assault or stalking. Reasonable accommodations under the statute may include implementation of safety measures.

### Time Off for Emergency Duty

AB 11 requires an employer with 50 or more employees to provide a temporary leave of absence of up to 14 days per calendar year for reserve peace officers and emergency rescue personnel to receive training. Current law only provided the training leave of absence to volunteer firefighters. AB 11 also expands the law to cover time off for “emergency rescue training” in addition to the existing protections for fire or law enforcement training.

### Paid Family Leave Benefits

SB 770 expands Paid Family Leave (PFL) wage-replacement benefits for employees to include benefits for time taken off to care for a seriously ill grandparent, grandchild, sibling or parent-in-law. PFL does not create the right to a leave of absence, but provides California workers with some financial compensation/wage replacement during a qualifying absence. This legislation will not take effect until **July 1, 2014**.

### San Francisco Family-Friendly Workplace Ordinance

San Francisco passed a Family-Friendly Workplace Ordinance that will require covered employers with employees working in San Francisco to consider requests for “flexible or predictable working arrangements to assist with care giving responsibilities.” The ordinance also protects employees from adverse action based on “caregiver status.” The ordinance requires a poster informing employees of their rights. The San Francisco Office of Labor Standards Enforcement (OLSE) will enforce the ordinance and develop the required notice.

## Background Checks

AB 218 prohibits a state or local agency from asking an applicant to disclose information regarding a criminal conviction until after the agency determines the applicant meets minimum employment qualifications.

There are specified exceptions, such as where a criminal history background check is otherwise required by law for the position. This legislation will not go into effect until **July 1, 2014**.

## Workers' Compensation

Several bills relating to workers' compensation were signed into law in 2013:

- AB 1309 limits the ability of professional athletes who work for out-of-state sports teams to bring workers' compensation claims in California. A player employed by an out-of-state sports team who wants to bring claims for cumulative trauma (such as for arthritis or brain injuries due to multiple concussions) will have to prove that he/she worked a good part of his/her career for teams based in California or spent more than 20 percent of his/her professional time working in California
- AB 607 relates to death benefits for dependent children
- AB 1376 relates to language assistance and interpreters
- SB 146 deals with medical treatment and billing and copies of prescriptions
- SB 809 involves reporting of controlled substances

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