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Preparing for Changes: California Legislative Update

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As is the norm, a new year will bring new laws for California employers. This article briefly outlines several key pending bills that will likely affect public employers if signed into law by Governor Brown during the 2017-2018 California legislative session.

AB 1867 (Reyes). Records Retention of Sexual Harassment Complaints

Act to Amend Government Code Section 12950.5

If enacted, AB 1867 would require all employers with 50 or more employees to maintain records of employee complaints of sexual harassment for at least ten years from the date of filing. The bill would also authorize the Department of Fair Employment and Housing to seek an order requiring an employer that violates the recordkeeping requirements to comply.

AB 1870 (Reyes, Friedman, and Waldron). Extended Time to File Discrimination Claims with DFEH

Act to Amend Government Code Section 12960 and Section 12980

Existing California law requires individuals alleging discrimination, harassment, or retaliation under the FEHA to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred.

If enacted, AB 1870 would extend the period to file a complaint from one year to three years.

AB 1938 (Burke). Prohibition against Familial Status Discrimination

Act to Amend Government Code Section 12940 and Section 12940

Existing California law prohibits an employer from making a non-job-related inquiry of an employee or applicant regarding certain protected categories, including, but not limited to, race, religion, national origin, or gender.

If enacted, AB 1938 would prohibit an employer from inquiring about a person's familial status. However, the bill would allow an employer to receive information regarding familial status that is provided voluntarily and without prompting. As currently drafted, AB 1938 defines familial status as: "one or more individuals under 18 years of age who reside with a parent, another person with care and legal custody of that individual, a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children, or the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian. The protections afforded by this part against discrimination on the basis of familial status also apply to any individual who is pregnant, who is in the process of securing legal custody of any individual under 18 years of age, or who is in the process of being given care and custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children."

AB 2069 (Bonta). Medical Cannabis

Act to Amend Government Code Section 12940

Existing California law prohibits employers from engaging in various forms of employment discrimination against employees in certain protected categories. AB 2069 would amend the California Fair Employment and Housing Act ("FEHA") to extend protections to medical cannabis users. If enacted, the bill would afford FEHA protections to employees who are qualified patients or persons with an identification card that use medical cannabis to treat a known physical or mental disability or known medical condition.

However, the bill would not prohibit an employer from refusing to hire an individual or discharging an employee who is a qualified patient or person with an identification card, if hiring or failing to discharge an employee would cause the employer to lose a monetary or licensing-related benefit under federal law. The bill would also not prohibit an employer from terminating the employment of, or taking corrective action against, an employee who is "impaired on the property or premises of the place of employment or during the hours of employment because of the use of cannabis."

AB 2154 (Bonta). Union Member Release Time

Act to Amend Government Code Section 3543.1 and to Add Section 3558.7

Existing California law requires public employers to grant employee representatives of recognized employee organizations reasonable time off without loss of compensation or benefits for certain purpose in connection with labor relations, commonly known as release time.

If enacted, AB 2154 would create specific requirements relating to release time that would apply to all public employers and employees. The bill would require public employers to grant a reasonable number of employee representatives of the exclusive representative reasonable time off without loss of compensation or other benefits for specified activities, including, but not limited to investigation and processing of grievances, enforcement of a collective bargaining agreement or memorandum of understanding, preparation for meeting and conferring, testifying or appearing in conferences, hearings, or other proceedings before PERB, civil service, or the public employer, or serving as a representative for a new employee orientation.

AB 2366 (Bonta). Leaves of Absence for Sexual Harassment Victims

Act to Amend California Labor Code Sections 230 and 230.1

Existing California law requires employers with 25 or more employees to provide protected leave for employees who are victims of domestic violence, sexual assault, or stalking for certain purposes.

If enacted, AB 2366 would extend this protection to victims of sexual harassment. The bill would also add protections for employees who are family members of the victims of domestic violence, sexual assault, stalking, or sexual harassment. However, the bill also clarifies that for the purposes of these sections, “employer” means “any person employing another under any appointment or contract of hire and includes the state, any political subdivision of the state, and the Legislature.”

AB 2778 (Carrillo). Public Safety Officers Procedural Bill of Rights Act

Act to Amend Government Code Section 3304

Existing California law requires employers to adhere to certain procedures and due process before any punitive action can be taken against a public safety officer.

If enacted, AB 2778 would specify that a public agency should consider education-based alternatives to punitive action against a public safety officer when appropriate.

AB 2680 (Jones-Sawyer). Uniform Conviction History Form

Act to Add Labor Code Section 432.9

Existing California law prohibits an employer from seeking or considering the conviction history of an applicant until after that

applicant has received a conditional offer of employment.

If enacted, AB 2680 would require the Department of Justice to adopt a standard form for use by an employer, whether private or public, seeking the consent of an applicant for employment to conduct a conviction history background check by the department. The bill would require employers to use the adopted standard form when seeking the consent of an applicant to conduct a conviction history background check. The bill would also provide that a violation of its provisions would not be subject to the misdemeanor provision.

AB 2841 (Gonzales Fletcher). Paid Sick Leave

Act to Amends Labor Code Section 246

Existing California law requires that employers provide employees who work in California for 30 or more days after starting their employment with paid sick days for certain purposes, to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment. Existing law allows employers to use a different accrual method other than providing one hour for every 30 hours worked, so long as the employee receives no less than 24 hours or 3 days of paid sick leave by the completion of their 120th calendar day of employment. Existing law also allows provides that employers have no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days.

AB 2841 would change the accrual and cap requirements. If enacted, employers must provide employees no less than 40 hours or 5 days of paid sick leave by the completion of the 200th calendar day of employment. The bill would also provide that an employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 80 hours or 10 days.

SB 820 (Leyva). Confidential Sexual Harassment Settlements

Act to Add Civil Procedure Code Section 1001

If enacted, SB 820 would prohibit provisions in settlement agreements that prevent the disclosure of factual information relating to a legal action for sexual harassment, sexual assault, or harassment or discrimination based on sex. SB 820 currently provides for an exception to the prohibition when the provision preventing disclosure is included at the request of the claimant. However, that provision is not applicable if a party to the agreement is a government agency or public official.

SB 1038 (Leyva). Personal Liability for Retaliation

Act to Amend Government Code Section 12940

If enacted, SB 1038 would impose personal liability on an employee for unlawfully retaliating against an individual in violation of the FEHA.

SB 1343 (Mitchell). Sexual Harassment Training

Act to Amend Government Code Section 12950 and Section 12950.1

Existing California law requires private employers with 50 or more employees and all public employers to provide at least two hours of prescribed training and education regarding sexual harassment to supervisory employees within six months of their assumption of position and once every two years.

If enacted, SB 1343 would require all private employers with five or more employees and all public employers to provide at least two hours of sexual harassment training to all employees by January 1, 2020, and once every two years thereafter. The bill would also require the Department of Fair Employment and Housing to develop a two-hour video training course that is available for download or streaming on the department's website, along with updates to existing information posters, fact sheets, and videos regarding sexual harassment. Employers would be able to adopt their own training programs or utilize the department's training course to satisfy the requirements.