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California Labor and Employment Legislation

2011-12 End-of-Session Summary

This September 30, 2012, marked the last date for Governor Brown to sign into law bills the Legislature passed to his desk for approval by its August 31, 2012 deadline. Below is a summary of those labor and employment-related bills that Governor Brown approved and will become law on January 1, 2013 (except as otherwise specified), as well as significant bills that Governor Brown vetoed.

The Governor approved legislation on various topics that will affect how employers do business in California, including:

- reorganization of the Department of Fair Employment and Housing;
- protections for religious dress and grooming practices and breastfeeding under FEHA;
- restrictions on the use of social media passwords;
- new requirements for employee inspection of personnel records;
- human trafficking posting requirements;
- defining injury for purposes of a violation of itemized wage statement requirements;
- imposing additional wage statement and wage theft notice requirements on temporary services employers; and
- much-needed reform to the workers' compensation system and disability access lawsuits.

Notably, a new law limiting depositions in state court actions to seven hours expressly does not apply to employment cases.

For additional details or insight into potential implications of these new laws please contact your Seyfarth Shaw attorney or any member of Seyfarth's California Legislative Team.

Approved

Social Media: Employer Use
AB 1844 Campos

Effective January 1, 2013, employers will be prohibited from requiring or requesting an employee or applicant for employment to: (1) disclose a user name or account password to access a personal social media account, (2) access personal social media in the employer's presence, or (3) divulge any personal social media. This legislation does not affect an employer's ability to request that an employee divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, as long as the

social media is used solely for that or a related investigation or proceeding. This legislation applies purely to *personal* social media. It does not restrict an employer from requesting or requiring an employee disclose username, password, or other method of accessing an employer-issued electronic device. With the enactment of this legislation, California joins the ranks of other states, including Illinois and Maryland, which enacted different forms of social media password protections.

Adds Chapter 2.5 (commencing with section 980) to Part 3 of Division 2 of the Labor Code.

Signed by the Governor September 27, 2012. Chapter 618 of the Statutes of 2012.

Social Media: Postsecondary Education
SB 1349 Yee

Similarly, as of January 1, 2013, public and private postsecondary educational institutions, and their employees and representatives, will be prohibited from requiring or requesting a student, prospective student, or student group to disclose, access, or divulge personal social media passwords or information. This legislation specifically prohibits these institutions from threatening a student, prospective student, or student group with or taking specified pecuniary actions for refusing to comply with a request or demand that violates that prohibition. Also effective January 1, 2013, private nonprofit or for-profit postsecondary educational institutions will be required to post their social media privacy policies on their Internet Web sites.

This legislation does not affect the institution's existing rights and obligations to protect against and investigate alleged student misconduct or violations of applicable laws and regulations.

Adds Chapter 2.5 (commencing with section 99120) to Part 65 of Division 14 of Title 3 of the Education Code.

Signed by the Governor September 27, 2012. Chapter 619 of the Statutes of 2012.

Personnel Records: Inspection Procedures, Time, and Penalties
AB 2674 Swanson

Currently, Labor Code section 1198.5 provides an employee the right to inspect, within a reasonable time after a request, his or her personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

This legislation will, effective January 1, 2013, add the following substantial detail to employers' obligations with respect to current and former employees' requests to inspect personnel records and employer retention of those records:

The employer will be required to make the personnel records available for inspection, or provide a copy if the employee so requests, to the current or former employee or employee's representative within 30 calendar days of the employer's receipt of the employee's written request. The employee and employer may agree in writing to a date longer than 30 days, but not to exceed 35 days, from the employer's receipt of the employee's request. The bill requires the employee to make the request to inspect or copy in writing, but provides that it may be on an employer-provided form and that the employer may designate the person to whom a request must be made. The employer may redact the name of any nonsupervisory employee contained in the personnel records prior to inspection or copying.

For current employees, the employer must make the records available for inspection or provide a copy at the place where the employee reports to work or another mutually-agreeable location. For former employees, the employer must make the records available for inspection or provide a copy at the location where the employer stores the records, unless a different location is mutually agreed upon in writing. The employee may receive a copy by mail if he or she reimburses the employer for postal expenses. For an employee who was terminated for a violation of law or an employment-related policy, involving harassment or workplace violence, the employer may make the records available at a location a reasonable driving distance from the former employee's residence or mail the records to the employee.

The employer will only be required to comply with one request for inspection or copying per year by a former employee, and only 50 requests per month by representative(s) of employees. These provisions do not apply during the pendency of a lawsuit an employee files relating to a personnel matter against his or her employer, or to an employee covered by a

valid collective bargaining agreement that provides for hours, wages, and working conditions, a procedure for copying and inspection of personnel records, and a regular rate of pay not less than 30 percent more than state minimum wage.

The employer must maintain a copy of the employee's personnel records for a minimum three years after termination of the employee's employment.

An employer who does not timely comply with the above inspection and copying requirements is liable to the employee or the Labor Commissioner for penalty of $750, plus injunctive relief and attorneys' fees; however, impossibility of performance is an affirmative defense to an alleged violation of this provision. These penalty provisions mirror those of section 226.

Amends section 1198.5 of the Labor Code.

Signed by the Governor September 30, 2012. Chapter 842 of the Statutes of 2012.

Itemized Wage Statements and Wage Theft Notice
AB 1744 Lowenthal

Effective January 1, 2013, Labor Code section 226 will define what constitutes an injury for purposes of a violation of the statute. Specifically, an employee will be deemed to suffer injury if: (A) the employer fails to provide a wage statement, or (B) fails to provide accurate and complete information and the employee cannot promptly without reference to other documents or information determine the following from the wage statement alone: (1) gross or net wages paid during the pay period, (2) total hours worked, (3) piece rate units earned and rate, (4) deductions, (5) pay period, (6) hourly rates and corresponding hours worked at each rates, (7) the employer's name and address, (8) the employee's name, and (9) the employee's last 4 digits (only) of his or her social security number or employee identification number. A "knowing and intentional failure" will not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. The fact finder is authorized to consider, in reviewing for compliance with these provisions, whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with section 226.

This legislation clarifies that an itemized wage statement "copy", for purposes of Labor Code section 226's requirement that an employer to keep a copy of the statement on file for at least 3 years at the place of employment or at a central location within the State of California, can include a computer-generated record rather than an actual duplicate copy.

Beginning July 1, 2013, in addition to existing requirements of Labor Code section 226 for itemized wage statements, the itemized statement temporary services employers issue will be required to include the rate of pay and the total hours worked for each temporary services assignment.

In addition, beginning January 1, 2013, temporary services employers will be required to include in the mandatory Labor Code section 2810.5 Wage Theft Notice provided to new employees the name, the physical address of the main office, the mailing address (if different from the physical address) of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary.

Security services companies that are licensed by the Department of Consumer Affairs and solely provide security services are excluded from the above requirements imposed upon temporary services employers.

Because this bill was Chaptered after SB 1255 (Wright, Chapter 843) and AB 2674 (Swanson, Chapter 842), this bill's amended version of Section 226, which incorporated the changes to SB 226 from those bills, is that which will become effective.

Amends sections 226 and 2810.5 of the Labor Code. Adds section 226.1 to the Labor Code.

Signed by the Governor September 30, 2012. Chapter 844 of the Statutes of 2012.

Written Commission Agreements: Temporary Payment Exemption
AB 2675 Swanson

Effective of January 1, 2013, an employer who enters into an employment contract with an employee involving commissions

as a method of payment will be required to put the employment contract in writing and set forth the method by which the commissions will be computed and paid. In other words, in practice, this bill requires that commission agreements (1) be in writing; (2) set forth the method by which the commissions are required to be computed and paid; and (3) contain a signed receipt for the contract from each employee. This new requirement was the result of AB 1396, which the Governor signed into law in 2011. AB 2675 (2012) exempts from this requirement temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

Amends section 2751 of the Labor Code.

Signed by the Governor September 30, 2012. Chapter 826 of the Statutes of 2012.

Wage and Hour: Compensation Agreements
AB 2103 Ammiano

California law generally requires the payment of overtime to nonexempt employees for hours worked over 8 in a day, 40 in a workweek, and on the seventh consecutive day of work. This calculation is simple for nonexempt employees paid an hourly wage, but not for nonexempt employees paid a fixed salary. Existing law therefore specifies, for purposes of computing the overtime rate of compensation, that a nonexempt full-time salaried employee's regular "hourly" rate of pay is 1/40th of the employee's weekly salary.

Effective January 1, 2013, payment of a fixed salary to a nonexempt employee includes compensation only for the employee's regular, non-overtime hours. The legislation effectively invalidates any private agreement to the contrary. In other words, parties who enter into "explicit mutual wage agreements" may only, through those agreements, provide for regular compensation, not overtime compensation. The stated intent of this legislation is to overturn *Arechiga v. Dolores Press* (2011) 192 Cal.App.4th 567, in which the Court of Appeal held an "explicit mutual wage agreement", between an employer and employee that provided a fixed salary for 66 hours of work each week, complied with California overtime laws and that no further overtime compensation was owed to the employee.

Amends section 515 of the Labor Code.

Signed by the Governor September 30, 2012. Chapter 820 of the Statutes of 2012.

Contractors: Sufficient Funds, Warehouse Workers
AB 1855 Torres

Effective January 1, 2013, warehouse contractors will be added to existing prohibitions on a person or entity from entering into a contract or agreement for labor or services with a contractor if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

Also effective January 1, 2013, upon the request of the Labor Commissioner, the person entering into the written agreement or contract will be required to provide to the Labor Commissioner a copy of the provisions of the contract or agreement, and any other documentation. Exempt from this requirement are any documents received by the Labor Commissioner pursuant to this requirement from the California Public Records Act.

Amends section 2810 of the Labor Code.

Signed by the Governor September 30, 2012. Chapter 813 of the Statutes of 2012.

Wage Garnishments
AB 1775 Wieckowski

Beginning July 1, 2013, the amount of wages protected from garnishment in California will increase. Under existing law, California mirrors federal requirements in Section 1673(a) of Title 15 of the United States Code. Those requirements are tied, in part, to the federal minimum wage, which is less than the California minimum wage. Under existing law, the maximum amount of disposable earnings of an individual judgment debtor exempt from the levy of an earnings withholding order (for

any workweek subject to the garnishment) could not exceed $217.50 per week (i.e. 30 x $7.25, the federal minimum wage). This legislation will exempt more wages from garnishment; the limit has been raised to $320 per week (i.e. 40 x $8.00, the California minimum wage). Wages exceeding $320 per week may be garnished up to a limit of 25% of the debtor's disposable income. Employers should take care to use the new threshold and keep in mind that they may be served with orders which are not up to date.

Amends sections 706.011 and 706.050 of the Code of Civil Procedure.

Signed by the Governor September 23, 2012. Chapter 474 of the Statutes of 2012.

Criminal Background Checks
AB 2343 Torres

Existing law provides for some employers to submit fingerprints to the California Department of Justice ("DOJ") and receive back a summary report including: date of birth, physical description, dates of arrest, arresting agencies and booking numbers, charges, dispositions, and similar data. Existing law requires the California DOJ to furnish this information in response to a request from certain employers who need the information to fulfill employment, certification, or licensing prerequisites (examples: law enforcement, community care facilities). The California DOJ currently supplements the initial fingerprint report by sending notices of any subsequent arrests for employers who so request.

Effective January 1, 2013, this legislation will permit the California DOJ to include the disposition of any subsequent arrest in the supplemental notices. This is a positive development for employers who use the California DOJ fingerprint report process because it was often difficult and time-consuming to determine whether the subsequent arrest had resulted in a conviction and therefore could be the basis of an adverse employment action under Labor Code Section 432.7. Starting in 2014, the FBI will include updated dispositions in its finger print reports, and this legislation will allow the California DOJ process to include that disposition information obtained from the FBI in its own reports. In essence, AB 2343 enables the California DOJ to take advantage of the FBI's process improvements and pass more detailed information on to employers.

This legislation also imposes a new obligation on all employers who use the California DOJ process. Specifically, it will require those employers to expeditiously furnish a copy of the finger print report or subsequent arrest report if the information in the report is a basis for an adverse employment, licensing, or certification decision.

Amends sections 11105 and 11105.2 of the Penal Code.

Signed by the Governor on September 7, 2012. Chapter 256 of the Statutes of 2012.

Human Trafficking: Public Posting Requirements
SB 1193 Steinberg

This is the latest of the Legislature's efforts to eradicate human trafficking to affect employers in California. The last effort, the California Transparency in Supply Chains Act of 2010, requires retail sellers and manufacturers conducting business in California with over $100 million in annual worldwide gross receipts to, beginning January 1, 2012, disclose what efforts, if any, are being made by the company to address and eliminate slave labor and human trafficking in their direct supply chains for tangible goods.

This legislation, effective January 1, 2013, will require the following businesses to post a notice that contains information related to slavery and human trafficking: (1) on-sale general public premises licensees under the Alcoholic Beverage Control Act; (2) adult or sexually oriented businesses; (3) primary airports; (4) intercity passenger rail or light rail stations; (5) bus stations; (6) privately owned and operated truck stops that provide food, fuel, shower or other sanitary facilities, and lawful overnight truck parking; (7) emergency rooms within general acute care hospitals; (8) urgent care centers; (9) farm labor contractors; (10) privately operated job recruitment centers; (11) roadside rest areas; and (12) certain businesses or establishments that offer massage or bodywork services for compensation.

The notice must be placed in a conspicuous location near the entrance or otherwise easily visible by the public and employees, and be printed notice in English, Spanish, and in one other language that is the most widely spoken language in

the county where the establishment is located and for which translation is mandated by the federal Voting Rights Act. The notice must provide information about and contact information for specified nonprofit organizations that provide services in support of the elimination of slavery and human trafficking. Even though the statute specifies the notice's specific content, font, and size, it also requires the Department of Justice to, on or before April 1, 2013, develop a model notice and make it available for download on the department's Internet Web site.

A business or establishment that fails to comply with these requirements is liable for a civil penalty of $500 for a first offense and $1,000 for each subsequent offense, enforceable by the Attorney General and local prosecutorial agencies if the business fails to correct the violation within 30 days from the date a regulatory agency sent the business or establishment notification of the offense.

Adds section 52.6 to the Labor Code.

Signed by the Governor September 24, 2012. Chapter 515 of the Statutes of 2012.

Disability Access: Liability
SB 1186 Dutton and Steinberg

This legislation should provide businesses some relief from lawsuits based on violations of the California equivalents of the federal Americans with Disabilities Act. The ADA allows only injunctive relief while California law provides $4,000 as a statutory penalty per occurrence of a violation. Except as otherwise provided, the provisions of this legislation took effect immediately upon signing on September 19, 2012.

Most notably, this legislation will reduce a defendant's minimum liability for statutory damages under the Unruh and Disabled Persons Acts from $4,000 to $1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 60 days of being served with the complaint and the area is new construction since 2008 that was inspected and approved by the local building department or was CASp-inspected. Alternatively, the legislation will reduce minimum liability from $4,000 to $2,000 for each offense if the defendant is a small business and has corrected all construction-related violations that are the basis of the claim within 30 days of being served with the complaint.

Also of note is a provision that requires a court, where the plaintiff alleges multiple claims for the same alleged violation on different occasions, to consider the reasonableness of the plaintiff's need to repeatedly visit the public accommodation in light of the plaintiff's obligation to mitigate damages. The legislation specifically states this provision is intended to address misuse of the Unruh and Disabled Persons Acts by lawyers and plaintiffs who allege the same barrier deterred the plaintiff on repeated occasions from visiting the public accommodation, for the purpose of stacking statutory liability and intimidating defendants into settlements.

Adds section 55.4 to the Civil Code. Amends section 4452 of the Government Code.

Signed by the Governor on September 19, 2012. Chapter 383 of the Statutes of 2012.

False Claims Act
AB 2492 Blumenfeld

California's False Claims Act, among other things, prohibits employers from engaging in certain acts that prevent employees from disclosing information to the government or law enforcement agency or from acting in furtherance of a false claims action.

In most relevant parts, this legislation expands California's already robust False Claims Act to ensure the state continues to receive federal dollars for Medicare programs. It also removes conditions on the availability of relief to an employee who is discharged, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because of the employee's acts to stop one or more violations of the False Claims Act. The legislation also authorizes the employee to bring an action in Superior Court within three years of the alleged retaliation.

Amends sections 12650, 12651, 12652, and 12654, adds 12654.5, and adds and repeals 12653 of the Government Code.

Signed by the Governor September 27, 2012. Chapter 647 of the Statutes of 2012.

FEHA: Breastfeeding
AB 2386 Allen

FEHA currently defines "sex" to include gender, pregnancy, childbirth, and medical conditions related to pregnancy or childbirth. Effective January 1, 2013, the term "sex" will include breastfeeding or medical conditions related to breastfeeding. This legislation states that its provisions are intended to be declaratory of existing law.

Amends section 12926 of the Labor Code.

Signed by the Governor September 28, 2012. Chapter 701 of the Statutes of 2012.

Religious Discrimination: Grooming and Dress Practices
AB 1964 Yamada

Effective January 1, 2013, a religious dress practice or religious grooming practice is included as a "belief" and "observance" covered by Fair Employment and Housing Act protections against religious discrimination. The bill broadly defines "religious dress practice" to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed, and "religious grooming practice" to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.

This legislation provides that an accommodation of an individual's religious dress practice or religious grooming practice that would require that person to be segregated from the public or other employees is not a reasonable accommodation, and no accommodation is required if it would result in the violation of certain laws protecting civil rights.

In signing the bill, the Governor stated: "Sikh Americans are loyal citizens who have been targeted because of widespread ignorance of their religion and culture...The bills I sign today aim to ensure that Californians learn about our Sikh citizens as well as protect all of us from job discrimination based on religious observances."

Amends sections 12926 and 12940 of the Government Code.

Signed by the Governor on September 8, 2012. Chapter 287 of the Statutes of 2012.

Department of Fair Employment and Housing: Reorganization and Revision
SB 1038 Committee on Budget and Fiscal Review

In relevant part, this budget trailer bill reorganizes and reduces the Department Fair Employment and Housing, to streamline the Department and cut costs to the State. Specifically, effective January 1, 2013, the Fair Employment and Housing Commission will be eliminated and a Fair Employment and Housing Council created within the Department of Fair Employment and Housing. The Council will consist of seven members appointed by the Governor and will have the power to issue regulations. The DFEH will now be able to go directly to court and seek all remedies available there, but must first engage in mandatory dispute resolution, with the DFEH's internal Dispute Resolution Division, free of change. This legislation will also establish a Fair Employment and Housing Enforcement and Litigation Fund in the State Treasury for purposes of depositing attorney's fees and costs awarded to the DFEH in certain civil actions, which will then be appropriated by the Legislature to offset the costs of the Department.

Amends sections 56, 138.7, 150, 151, 152, 153, 156, 511, 515.5, 515.6, 1202, 1773.3, 1776, 1777.5, 1777.7, 2012, 2013, 2686, 3072, 3073, 6332, 6401.7, 6409, 6409.1, 6410, 6411, 6413, and 6413.2 and the heading of Chapter 7 (commencing with Section 150) of Division 1 of the Labor Code. Adds Chapter 4.5 (commencing with Section 108) to Division 1 of the Labor Code. Repeals Sections 65, 3099, 3099.2, 3099.3, 3099.4, and 3099.5, and Chapter 9 (commencing with Section 1137) of Part 3 of Division 2 of, the Labor Code.

Approved by the Governor and Chaptered on June 27, 2012. Chapter 46 of the Statutes of 2012.

Civil Procedure: Depositions

AB 1875 Gatto

Effective January 1, 2013, the deposition of any person will be limited to seven hours of total testimony, bringing California in line with federal procedures. **This expressly does not apply to any case brought by an employee or applicant for employment against an employer for acts or omissions arising out of or relating to the employment relationship**. Other exceptions to this requirement are for expert witnesses, persons most knowledgeable, complex cases, and as otherwise provided by court order or the parties' stipulation. The court will be required to allow additional time if necessary to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

Adds section 2025.290 to the Code of Civil Procedure.

Introduced February 22, 2012. To enrollment on August 29, 2012.

Employment of Infants: Entertainment Industry
AB 2396 Committee on Arts, Entertainment, Sports, Tourism and Internet Media

Existing law prohibits the employment on a motion picture set or location of an infant under the age of one month unless a board-certified pediatric physician and surgeon certifies that the infant is at least 15 days old, was carried to full term, was of normal birth weight, is physically capable of handling the stress of filmmaking, and the infant's lungs, eyes, heart, and immune system are sufficiently developed to withstand the potential risks. Violation of this provision is a misdemeanor punishable by a fine of $2,500 to $5,000, 60-day jail term, or both. The certification must be provided to the Labor Commissioner, who will consent to the minor's employment through issuance of a permit.

Effective January 1, 2013, the medical certification will be required to be provided before a temporary permit for the employment of the infant may be issued.

Amends section 1308.10 of the Labor Code.

Signed by the Governor September 8, 2012. Chapter 260 of the Statutes of 2012.

Multiple Employer Welfare Arrangements: Benefits.
SB 615 Calderon

Commencing January 1, 2014, the federal Patient Protection and Affordable Care Act (PPACA), requires a health insurance issuer that offers coverage in the small group or individual market to ensure that such coverage includes the "essential health benefits package.".

Existing state law places certain requirements on a self-funded or partially self-funded multiple employer welfare arrangement (MEWA) to provide benefits to any eligible California residents. Existing law limits those MEWA's to providing certain benefits, including medical, dental, and surgical.

This legislation will, commencing January 1, 2014, prohibit a MEWA from offering, marketing, representing, or selling any product, contract, or discount arrangement as minimum essential coverage or as compliant with the essential health benefits requirement under the federal Patient Protection and Affordable Care Act, unless it meets the applicable requirements under the PPACA.

Amends section 742.40 of the Insurance Code.

Signed by the Governor September 8, 2012. Chapter 266 of the Statutes of 2012.

Workers' Compensation Reform
SB 863 De Leon

This workers' compensation legislation addresses issues with liens, shortens the medical-legal process, implements an independent medical review system and streamlines the permanent disability schedule. According to the Department of Industrial Relations, these changes are expected to provide $740 million a year in new benefits for permanently disabled workers, starting next year, while reducing overall medical and compensation costs by 4 percent.

In an August 31 news release, Governor Brown commended the Legislature for "an extraordinary workers' compensation reform bill that helps injured workers and averts an imminent crisis of skyrocketing rates. Again, Republicans have joined Democrats to work together—perhaps, a portent of good things to come."

Amends Sections 11435.30 and 11435.35 of the Government Code, Sections 62.5, 139.2, 3201.5, 3201.7, 3700.1, 3701, 3701.3, 3701.5, 3701.7, 3701.8, 3702, 3702.2, 3702.5, 3702.8, 3702.10, 3742, 3744, 3745, 3746, 4061, 4062, 4062.2, 4062.3, 4063, 4064, 4453, 4600, 4603.2, 4603.4, 4604, 4604.5, 4605, 4610, 4610.1, 4616, 4616.1, 4616.2, 4616.3, 4616.7, 4620, 4622, 4650, 4658, 4658.5, 4658.6, 4660, 4701, 4903, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4905, 4907, 5307.1, 5307.7, 5402, 5502, 5703, 5710, and 5811 of the Labor Code. Adds Sections 139.32, 139.48, 139.5, 3701.9, 4603.3, 4603.6, 4610.5, 4610.6, 4658.7, 4660.1, 4903.05, 4903.06, 4903.07, 4903.8, 5307.8, and 5307.9. Adds and repeals Section 3702.4 of the Labor Code. Repeals sections 4066 and 5318 of the Labor Code.

Signed by the Governor September 19, 2012. Chapter 363 of the Statutes of 2012.

Vetoed

Employment Discrimination: Unemployed Status
AB 1450 Allen

In his veto message, Governor Brown stated: "[t]his measure seeks to prevent discrimination against the unemployed based on their job status by prohibiting employers from stating in employment ads that applicants must be employed. Unfortunately, as this measure went through the legislative process it was changed in a way that could lead to unnecessary confusion."

Specifically, this bill would have made it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employer or employment agency to knowingly or intentionally refuse to consider for employment or refuse to offer employment to an individual because of the individual's status as unemployed, publish an advertisement or announcement for any job that includes provisions pertaining to an individual's status as unemployed, or direct or request that an employment agency take an individual's status as unemployed into account in screening or referring applicants for employment. This bill would have subjected an employer or employment agency who violates the above provisions to civil penalties that increase as the number of violations increase, but would not have created a private cause of action.

Opponents argued this bill - one of many similar bills throughout the country, including bills approved in New Jersey and Oregon - could severely restrict employers from inquiring about the individual's most recent employer, including dates of employment and reasons for the separation of employment.

Vetoed September 30, 2012.

Contractors: Disclosures
AB 2389 Lowenthal

Existing Business and Professions Code provisions prohibit false or misleading advertisement and the impersonation of a licensed individual. This bill would have created a new section of the Civil Code which is a sort of "truth in labeling" requirement for logos on vehicles and uniforms where one company contracts with non-employee "contractors" for services rendered in consumer's dwellings. The bill would have prohibited a contractor that provides services that require entering the residence or place of lodging of a member of the public from utilizing a uniform that bears the name or logo of the contracting entity, unless each uniform meets certain disclosure requirements. Specifically, uniforms would have been required to clearly, conspicuously, and legibly state the contractor's name and logo. In addition, the law would have prohibited a contractor that provides the above services relating to public health or safety from using a vehicle that bears the name or logo of the contracting entity unless each vehicle also clearly, conspicuously, and legibly states the contractor's name and logo. These provisions would not have applied if a contracting entity and a contractor are jointly and severally liable for any claims arising out of work performed pursuant to a contractual agreement.

While consumer protection was an obvious purpose of this bill, there was a subsidiary goal of educating consumers about

outsourcing public services and the extent to which companies are subcontracting and outsourcing. The stated intent of Legislature was to increase consumer awareness of the state's growing and sizeable contract workforce through the disclosures required by these provisions. The sponsors claimed this bill would have provided California consumers a clearer picture of the relationship between the workers who show up at the front door and the company that sent them there.

In his veto message, the Governor wrote "[t]his is a bill that is ultimately about the growing practice of subcontracting in the service industry. I agree that this is a topic that requires greater scrutiny - and more detailed information. It is not clear to me that requiring logos on uniforms and vehicles solves any problems, but it may spawn confusion and some costs. I think we need to know more before prescribing practices such as those suggested by this bill."

Vetoed September 30, 2012.

Agricultural Employee Safety
AB 2346 Butler & AB 2676 Calderon

AB 2346, the Farm Worker Safety Act, would have created a private right of action to allow workers to sue employers for repeated violations of the state's heat safety regulations. AB 2676, the Humane Treatment for Farm Workers Act, would have imposed criminal penalties on anyone who directs or supervises farm workers and fails to provide sufficient amounts of shade and water. In his veto messages, the Governor noted that California has enhanced existing safety regulations and that enforcement and compliance has increased. He noted that while enforcement of heat standards can be improved, the new enforcement structure should be through the regulation - not through legislation that would "single out agricultural employers and burden the courts with private lawsuits."

Vetoed September 30, 2012.

Domestic Workers' Rights
AB 889 Ammiano and V. Manuel Perez

This bill would have required the Department of Industrial Relations, by January 1, 2014, to adopt regulations governing the working conditions of domestic work employees. In vetoing the bill, Governor Brown raised questions including additional costs that the bill may cause to those employing domestic workers and whether it would cause fewer jobs, less flexible hours, or fewer hours for the domestic workers. He called upon the Department of Industrial Relations to study these questions and to issue new regulations to provide overtime, meal, rest break, and sleep periods for domestic workers, which the Governor views as more flexible than an "untested" statutory scheme.

Vetoed September 30, 2012.

2012 Legislative Calendar

Nov. 6 —General Election.
Nov. 22–23 —Thanksgiving Holiday.
Nov. 30 —Adjournment sine die at midnight (Art. IV, Sec. 3(a)).

Direct comments and questions to:

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