

California Labor and Employment Legislation

The California Legislature adjourned in the wee hours of the morning on August 30, in advance of the official August 31 close of the 2013-14 Legislative Session. It sent a number of employment-related bills to Governor Brown for consideration by his September 30, 2014 deadline to sign or veto the bills. Below is a summary of the most relevant private labor and employment bills from this legislative session.

Follow our Cal Pecs blog www.calpecs.com for more in-depth analysis of how some of the new legislation may affect employers doing business in California.

Signed by the Governor

Employment: Paid Sick Days **AB 1522 Gonzalez**

This bill enacts the “Healthy Workplaces, Healthy Families Act of 2014.” The Act’s key provisions are:

Requires 24 Hours of Paid Sick Leave Per Year: The Act grants a right to earn paid sick days to most employees who—on or after July 1, 2015—work in California for 30 or more days within one year from the commencement of employment. Paid sick days will accrue at the rate of one hour for every 30 hours worked. Exempt employees’ accrual is based on a presumed 40-hour workweek, except that an exempt employee whose normal workweek is fewer than 40 hours will accrue paid sick days based on that employee’s normal workweek. Employees using the sick pay must be compensated at their normal rate during regular work hours. If an employee is paid at more than one rate or at a commission or piece rate, then the employer is to determine the sick pay by taking the employee’s total wages—not including overtime premium—and dividing into that total the hours worked in the prior 90 days.

An employer may limit use of paid sick days to 24 hours or to three days in each year of employment, but must allow accrued unused days to carry over to the next year. An employer has no obligation to allow an employee’s total accrual of paid sick days to exceed 48 hours or six days. No accrual or carry over is required if the full amount of leave is received at the beginning of each year.

The Act does not require an employer to provide additional paid sick days if (i) the employer has an existing paid leave or paid time off policy, (ii) the employer makes the paid leave available under the same conditions as stated in the new law, and (iii) the existing policy either (a) satisfies the accrual carryover and use requirements or (b) provides for at least 24 hours or three days of paid sick leave per 12 months of employment or calendar year. Nonetheless, employers with adequate pre-existing policies must still comply with the new law’s other obligations, such as notices, posting, and recordkeeping.

Qualifying Reasons for Use: Employers must, upon an employee’s written or oral request, provide paid sick days for (1) the employee or employee’s family member’s (child, parent, spouse, registered domestic partner, grandparent, sibling) diagnosis, care (includes preventative care), or treatment of an existing health condition, and (2) an employee who is a victim of domestic violence, sexual assault, or stalking.

No Pay Out Required: The Act does not require employers to treat sick pay like vested vacation, so the Act does not require employers to pay employees for accrued, unpaid sick days upon termination. But the employer must reinstate unused sick days if the employee is rehired within one year of termination.

Notice and Posting Requirements: Employers must (1) post a new workplace poster (which the Act directs the DLSE to provide), (2) amend Wage Theft Notices to include a statement about the requirements of this new law (the DLSE will need to adjust its template notice), and (3) provide employees with written notice of the amount of paid sick leave available on the employee's wage statement or on a separate document provided to the employee on the date that wages are paid. Violation of the third requirement subjects the employer to penalties under the Act, but not under Labor Code Section 226. The Act further requires employers to keep, for three years, records documenting hours worked and sick days accrued by employees, and to make the records available to the Labor Commissioner and employee for inspection. If an employer fails to keep adequate records, then the employee is entitled to the maximum accrual unless the employer proves otherwise by "clear and convincing evidence."

Prohibits Adverse Action and Creates Rebuttable Presumption: The Act prohibits employers from denying employees the right to use accrued sick days, and from discriminating or retaliating against an employee who uses or attempts to use paid sick days, who files a complaint with the Labor Commissioner, who alleges a violation of the Act, who participates in an investigation under the Act, or who opposes any policy or practice prohibited by the Act. The Act creates a rebuttable presumption of unlawful retaliation if an employer denies an employee takes adverse action (including denying use of sick days) against an employee within 30 days of the employee filing a complaint, cooperating in an investigation, or opposing a practice prohibited by the Act.

Enforcement and Penalties: The Labor Commissioner may enforce the Act by awarding reinstatement, back pay, and pay for sick days unlawfully withheld, plus administrative fines and civil penalties on behalf of the aggrieved employee. Liable employers must pay attorney's fees, costs, and interest in actions by the Labor Commissioner or the Attorney General. Among the potential fines and penalties are an administrative penalty that includes the greater of the dollar value of the number of paid sick days withheld from the employee times three, or \$250, not to exceed \$4,000. If the violation results in harm to the employee, then a \$50 per day additional penalty applies, up to \$4,000. Employers are also subject to a \$100 per offense penalty for willfully violating the posting requirement. Only employers that make an "isolated and unintentional payroll error or written notice error that is clerical or inadvertent" are absolved from penalty or liquidated damages assessments.

Exemptions: Employees whose employment is governed by a valid collective bargaining agreement that provides for the payment of wages, hours of work, working conditions, premium overtime, regular hourly rate of pay not less than 30 percent greater than the state minimum wage, paid sick or similar leave, and final and binding arbitration of disputes regarding the paid sick days provision. Also exempt are construction employees covered by CBAs with specified provisions, in-home supportive services providers, and certain air carrier and flight personnel.

Amends § 2810.5 of the Labor Code and adds Article 1.5 (commencing with § 245) to Chapter 1, Part 1 of Division 2 of the Labor Code.

Signed by the Governor on September 10, 2014. Chapter 317 of the Statutes of 2014.

Labor Contracting: Client Liability AB 1897 Hernandez

Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided. This bill establishes liability for client employers that obtain workers from third-party labor contractors.

Under the bill, a client employer would be required to share with a labor contractor civil liability for all workers supplied by the labor contractor for the payment of wages, and the failure to obtain valid workers' compensation coverage. A worker or the worker's representative must notify the client employer of specified violations at least 30 days prior to filing a civil action against a client employer. Neither the client employer nor the labor contractor can take any adverse action against a worker for providing this notice or for filing a claim or civil action.

Adds § 2810.3 to the Labor Code.

Signed by the Governor on September 28, 2014. Chapter 728 of the Statutes of 2014.

“Unfair Immigration-Related Practices” Clean-Up

AB 2751 Hernandez

This new law was intended to “clean up” the law relating to unfair immigration-related practices that was enacted in 2013, and made effective January 1, 2014. The new law:

Specifies that the \$10,000 civil penalty added to Labor Code section 98.6 for retaliation is to be awarded to the employee or employees who suffered the violation.

Adds “threatening to file or filing a false report or complaint with any state or federal agency” as an “unfair immigration-related practice.”

Expands the existing prohibition on “an employer discharging, discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update personal information” “based on a lawful change of name, social security number, or federal employment authorization document.” The Act removes the qualification from this provision that allowed the employer to take adverse action if the employee’s personal information changes are directly related to the skill set, qualifications, or knowledge required for the job.

Amends §§ 98.6, 1019, and 1024.6 of the Labor Code.

Signed by the Governor on June 28, 2014. Chapter 79 of the Statutes of 2014.

Recovery of Wages: Liquidated Damages

AB 2074 Hernandez

Existing law permits an employee to recover liquidated damages from the employer for failure to pay the minimum wage, in the amount of the unpaid wages plus interest. Under existing law, the statute of limitations for wage claims is three years but only one year for penalties. This bill is intended to “clarify” that the statute of limitations for a lawsuit to pursue liquidated damages for failure to pay minimum wage will not run until the expiration of the statute of limitations for the wages for which the penalties are sought—three years. This bill effectively allows employees to recover three years of interest on the unpaid wages instead of only one.

Amends § 1194.2 of the Labor Code. Chapter 211 of the Statutes of 2014.

Signed by the Governor on August 19, 2014. Chapter 211 of the Statutes of 2014.

Employment: Wages

AB 2743 Hernandez, Alejo, Chau, Holden

Existing law authorizes regular short-term theatrical and concert venue employees to enter into a collective bargaining agreement that establishes a time limit for payment of wages after an employee is discharged or laid off.

This new law adds these employees to those who may seek and recover Labor Code section 203 penalties if their employer fails to pay final wages within the time period specified in the CBA after discharge.

Amends § 203 of the Labor Code.

Signed by the Governor on August 19, 2014. Chapter 210 of the Statutes of 2014.

Child Labor Protection Act of 2014

AB 2288 Hernandez

This new law enacts the Child Labor Protection Act of 2014, which authorizes treble damages to an individual who was discriminated against in the terms or conditions of employment for filing a claim or civil action alleging a violation of employment laws that arose while the individual was a minor. The bill states it is declaratory of existing law that the statute of limitations for claims arising under the Labor Code is tolled until the minor attains the age of majority. The new law also provides that certain violations involving minors aged 12 or younger are subject to a civil penalty of \$25,000-\$50,000 per violation.

Adds § 1311.5 to the Labor Code.

Signed by the Governor on July 8, 2014. Chapter 96 of the Statutes of 2014.

Entertainment Industry: Child Performer Services Permit
AB 1680 Wilk

Under existing law, Child Performer Services Permits are issued to talent agents and other persons who represent or provide services to artists who are minors. This bill requires anyone with such a permit to include the permit number in all advertising materials, including print and electronic media and Internet advertising.

Amends § 1706 of the Labor Code.

Signed by the Governor on August 21, 2014. Chapter 232 of the Statutes of 2014.

Occupational Safety and Health: E-Mail Reporting
AB 326 Morrell

Existing law requires an employer to submit a report of every serious occupational injury, illness, or death to the Division of Occupational Safety and Health. This bill amends that law to require, in every case involving a serious injury or illness or death, that a report shall also be made immediately by the employer to the Division of Occupational Safety and Health by telephone or email.

Amends § 6409.1 of the Labor Code.

Signed by the Governor on July 8, 2014. Chapter 91 of the Statutes of 2014.

Appellate Court Decisions
AB 1932 Jones

Under existing law, appellate divisions of California superior courts need not state reasons for their decision. This bill amends existing law to require appellate divisions to include a brief statement of the reasons for their judgment, so that "litigants, a significant number of whom are self-represented," can have an "idea how or why the appellate division reached its decision." A judgment stating only "affirmed" or "reversed" is insufficient.

Amends § 77 of the Code of Civil Procedure.

Signed by the Governor on June 25, 2014. Chapter 58 of the Statutes of 2014.

Health Care Coverage: Waiting Periods
SB 1034 Monning

This legislation will (1) prohibit a health care service plan or health insurer offering group coverage from imposing a separate waiting or affiliation period in addition to any waiting period imposed by an employer for a group health plan on otherwise eligible employees or dependents, and (2) permit a health care service plan or health insurer offering group coverage to administer a waiting period imposed by a plan sponsor.

Existing law requires an employer offering certain small market grandfathered plans to send a written notice to an eligible employee or dependent who fails to enroll during an open enrollment period that the dependent may be excluded from coverage for a specified period of time. This bill would instead require the notice to inform the eligible employee or dependent that he or she may be excluded from eligibility for *coverage until the next open enrollment period*.

Amends §§ 1357.51, 1357.514, 1357.600, and 1357.614, repeals and adds §§ 1357.506 and 1357.607 to the Health and Safety Code, and amends §§ 10198.7, 10753.05, 10755, and 10755.05, and repeals and adds §§ 10753.08 and 10755.08 to the Insurance Code.

Signed by the Governor on August 15, 2014. Chapter 195 of the Statutes of 2014.

Workers' Compensation
AB 2732 Committee on Insurance

This bill attempts to “clean up” 2012 workers’ compensation reform legislation by making substantive and non-substantive changes. In the former category, the bill authorizes the employee to pursue medical-legal expenses through the Workers’ Compensation Appeals Board lien process. The bill also requires the employer to reimburse lien filing or activation fees, plus interest. The bill also states that existing law’s prohibition against lien assignment only applies to liens filed prior to January 1, 2013.

Amends §§ 4600, 4610.5, 4903, 4903.07, 4903.8, and 5410 of the Labor Code.

Signed by the Governor on August 19, 2014. Chapter 217 of the Statutes of 2014.

Occupational Safety and Health: Violations
AB 1634 Skinner

For serious violations, this new law will allow the Division of Occupational Safety and Health to modify civil penalties or grant an employer credit for abatement only if the employer has either abated the violation at the time of initial inspection, abated the violation at the time of a subsequent inspection prior to the issuance of a citation, or submitted a signed statement under penalty of perjury and supporting evidence when necessary to prove abatement. The Division may grant a modification to civil penalties for abatement only if the employer has abated the violation at the time of the initial or subsequent inspection or the statement, signed under penalty of perjury, and supporting evidence are received within 10 working days after the end of the abatement period.

If an employer has not abated a serious violation by the initial or subsequent inspection, the Division must require the employer to submit a signed statement with supporting evidence when necessary to prove abatement that he or she has complied with the abatement terms within the abatement period.

Filing a petition for or the pendency of reconsideration of a final order or decision involving a citation classified as serious, repeat serious, or willful serious, will not stay or suspend the requirement to abate unless the employer demonstrates by a preponderance of the evidence that a stay or suspension of abatement will not adversely affect the health and safety of employees.

Amends §§ 6319, 6320 and 6625 of the Labor Code.

Approved by the Governor on September 20, 2014. Chapter 497 of the Statutes of 2014.

Harassment: Unpaid Interns
AB 1443 Skinner

This bill provides that discrimination against any person in the selection, termination, training, or other terms or treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer on any ground defined in the California Fair Employment and Housing Act is an unlawful employment practice.

Amends § 12940 of the Government Code

Signed by the Governor on September 9, 2014. Chapter 302 of the Statutes of 2014.

Driver’s Licenses: Nondiscrimination
AB 1660 Alejo

This bill makes it a violation of the California Fair Housing and Employment Act (FEHA) for an employer to discriminate against an individual because he or she holds a special driver’s license, issued under Vehicle Code, for persons who are unable to submit satisfactory proof that their presence in the U.S. is authorized under federal law but who provide satisfactory proof of identity and California residency and meet other qualifications for licensure. This bill would additionally make it a violation of the FEHA for an employer to require a person to present a driver’s license, unless possessing a driver’s license is required by law or is required by the employer and the employer’s requirement is otherwise permitted by law. The new law states, “nothing in this section shall be construed to limit or expand an employer’s authority to require a person to possess a driver’s license.”

Additionally, the bill amends FEHA to specify that discrimination on the basis of national origin includes discrimination on the basis of possessing such a driver's license. However, the bill also provides that an action taken by an employer to comply with any requirement or prohibition under the federal immigration and Nationality Act is not a violation of law.

The bill also exempts from disclosure under the California Public Records Act driver's license information obtained by an employer.

Amends § 12926 of the Government Code and §§ 1653.5, 12800.7 and 12801.9 of the Vehicle Code.

Signed by the Governor on September 19, 2014. Chapter 452 of the Statutes of 2014.

Employment Discrimination or Harassment: Education and Training: Abusive Conduct
AB 2053 Gonzalez

With this legislation, mandatory sexual harassment training and education for supervisory employees must now include prevention of abusive conduct. "Abusive conduct" is defined as "conduct with malice that a reasonable person would file hostile, offensive, and unrelated to an employer's legitimate business interests," and may include repeated infliction of verbal abuse (e.g., derogatory remarks, insults, and epithets), verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance.

The legislative history indicates that "abusive conduct" needs not be linked the enumerated protected categories in the California Fair Employment and Housing Act. In other words, the training should be aimed at all derogatory remarks, physical conduct, and "gratuitous sabotage or undermining"—not just actions based on race, age, sex, etc. This legislation appears to be the first foray into addressing "bullying" in the workplace that is not necessarily linked to illegal discrimination.

A single act does not constitute abusive conduct unless especially severe or egregious.

Amends § 12950.1 of the Government Code.

Signed by the Governor on September 9, 2014. Chapter 306 of the Statutes of 2014.

Courts: Frivolous Actions or Proceedings
AB 2494 Cooley

Existing law requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record or an unrepresented party certifying to the best of the person's knowledge, information, and belief that the paper is not being presented primarily for an improper purpose and that the claims, defenses, and legal and factual contentions are warranted. This bill deletes a date restrictor in Code of Civil Procedure section 128.5 (which governs awards and sanctions for frivolous and bad faith court filings) and, effective January 1, 2015 until January 1, 2018, allows a trial court to order a party, the party's attorney, or both, to pay reasonable expenses, including attorney's fees, incurred by another party due to bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. The bill includes in the definition of "actions or tactics" the filing and serving of a complaint, cross-complaint, answer or other responsive pleading, but excludes disclosures and discovery requests, responses, objections, and motions. The bill will require a party filing a motion for sanctions under Section 128.5 to promptly transmit to the California Research Bureau a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any resulting order. The bill would also require the party to indicate whether a motion for sanctions was made for a violation of the signing certification provisions described above.

Amends, repeals, and adds § 128.5 of the Code of Civil Procedure.

Signed by the Governor on September 18, 2014. Chapter 425 of the Statutes of 2014.

Employees: Emergency Rescue Personnel
AB 2536 Mullin

Existing law prohibits an employer from discharging or in any manner discriminating against an employee for taking time off to perform emergency duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel. This bill broadens the definition of emergency rescue personnel to include an officer, employee, or member of a disaster medical response team sponsored by the state. Existing law exempts a public safety agency or provider of emergency medical services from these provisions if, as determined by the employer, the employee's absence would hinder public safety or emergency medical

services. Employees who are healthcare providers will be required to notify their employer (1) at the time they become designated as emergency rescue personnel and (2) when the employees are notified they will be deployed.

Amends § 230.3 of the Labor Code.

Signed by the Governor on September 15, 2014. Chapter 343 of the Statutes of 2014.

Foreign Labor Contractors: Registration
SB 477 Steinberg

This bill will change the definition of a foreign labor contractor to mean a person who performs foreign labor contracting activity, as defined. Effective on July 1, 2016, this law requires a foreign labor contractor to register with the Labor Commissioner and will impose conditions for registration, including fees and posting of a surety bond. The Labor Commissioner is charged with enforcing this new law and is authorized to adopt regulations or policies and procedures for implementation. The bill prohibits a person from knowingly entering into an agreement for the services of a foreign labor contractor that is not registered.

The new law contains a number of protections for foreign workers working through a foreign labor contractor, including prohibiting a foreign labor contractor and its agent from assessing a fee or cost to a foreign worker for foreign labor contracting activities. The bill will also prohibit charging a foreign worker with any costs or expenses not customarily assessed against similarly situated workers, and would limit the amount of housing costs charged to the foreign worker to the market rate for similar housing. The bill will prohibit requiring a foreign worker to pay any costs or expenses prior to commencement of work and additional requirements or changes to the terms of the contract originally provided to and signed by the foreign worker (unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes and specifically consents to each additional requirement or change.

Amends §§ 9998.1, 9998.6, and 9998.8 of the Business and Professions Code, adds §§ 9998.1.5, 9998.2.5, 9998.10, and 9998.11 and repeals and adds § 9998.2.

Signed by the Governor on September 28, 2014. Chapter 711 of the Statutes of 2014.

Contracts: Unlawful Contracts
AB 2365 Perez

This bill would make it unlawful to include a provision in a contract for the sale or lease of consumer goods or services that waives a consumer's right to make any statement regarding the seller, lessor, employees, or agents, regarding the goods or services. It will also be unlawful to threaten, seek to enforce an unlawful provision, or otherwise penalize a consumer for making any statement protected under the bill.

Civil penalties include \$2,500 for the initial violation, \$5,000 for each thereafter, and an additional \$10,000 if the violation was willful, intentional, or reckless. A civil action may be brought by the consumer, the Attorney General, a district attorney or a city attorney for violations of the bill. The penalties are not exclusive remedies.

However, the bill does not prohibit a person or business hosting online consumer reviews or comments from removing a statement that is otherwise lawful to remove.

Adds § 1670.8 to the Civil Code.

Signed by the Governor on September 9, 2014. Chapter 308 of the Statutes of 2014.

Farm Labor Contractors
SB 1087 Monning

Farm labor contractors are required to be licensed. This bill would prohibit issuance a license to operate as a farm labor contractor to a person who has been found by a court or an administrative agency to have committed sexual harassment of an employee within three years, or who employed any supervisory employee whom he or she knew or should have known has been found by a court or an administrative agency to have committed sexual harassment of an employee. This bill would additionally authorize the Labor Commissioner to revoke, suspend, or refuse to renew a farm labor contractor's license for the same reasons. These provisions would not apply until the Labor Commissioner makes a specified form available. The

bill would also require the farm labor contractor to provide a written statement to the Labor Commissioner that all new nonsupervisory employees have been trained at the time of hire and have been trained at least once every two years in identifying, preventing, and reporting sexual harassment.

Existing law requires an applicant for a license to act as a farm labor contractor to participate in at least 8 hours of educational classes each year. This bill would increase the requirement to 9 hours of classes and require that those classes include at least one hour of sexual harassment prevention training.

It is a crime for an employer who has made withholdings from an employee's wages willfully or with intent to defraud to fail to remit the withholdings to the proper agency or to fail to make any required payments. This bill would authorize the Labor Commissioner to refuse to issue or renew the license until the amount of any delinquency under these provisions is fully paid.

Existing law requires every licensee to have a written statement ready for inspection stating the rate of compensation he or she receives from the grower and that he or she is paying to employees, as specified. This bill would require that this statement be provided to a current or former employee or the grower within 21 calendar days of a written request.

Amends §§ 1684, 1685, 1690, 1690.1, 1694, 1695, 1695.55, 1696.2, 1696.5, and 1697 of the Labor Code.

Signed by the Governor on September 28, 2014. Chapter 750 of the Statutes of 2014.

Workplace Violence Prevention Plans: Hospitals

SB 1299 Padilla

This bill would require that, by July 1, 2016, the Occupational Safety and Health Administration Standards Board adopt standards requiring certain hospitals to adopt a workplace violence prevention plan as a part of the hospital's injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior.

Adds § 6401.8 to the Labor Code.

Signed by the Governor on September 29, 2014. Chapter 842 of the Statutes of 2014.

Solid Waste: Single-Use Carryout Bags

SB 270 Padilla

This bill would ban certain types of bags used in stores. Beginning July 1, 2015, stores that have a specified amount of sales in dollars or retail floor space will be prohibited from providing a single-use carryout bag to customers. Certain exceptions apply. The following year the ban will apply to convenience food stores, foodmarts, and entities selling a limited line of goods, or goods intended to be consumed off premises, and that hold a specified license with regard to alcoholic beverages.

Retail establishments may voluntarily comply with the bill's provisions.

Adds Chapter 5.3 (commencing with § 42280) to Part 3 of Division 30 of the Public Resources Code.

Signed by the Governor on September 30, 2014. Chapter 850 of the Statutes of 2014.

Employees: Wages

AB 1723 Nazarian

This bill would authorize the Labor Commissioner, in issuing citations issued for failure to pay minimum wage, any applicable Labor Code section 203 "waiting time" penalties where the employer willfully fails to pay any wages of an employee who is discharged or resigns.

Amends § 1197.1 of the Labor Code.

Signed by the Governor on September 30, 2014. Chapter 886 of the Statutes of 2014.

Public Benefits: Reports on Employers

AB 1792 Gomez

This bill would require the State Department of Health Care Services ("DHCS") to annually inform the Employment Development Department ("EDD") of the names and social security numbers of recipients of the Medi-Cal program. The bill would also require EDD to collaborate with DHCS and the State Department of Social Services to determine the total average cost of state and federally funded benefits provided to each identified "employers" (defined as an individual or organization

that employs 100 or more beneficiaries of the Medi-Cal program) employees. Using the data, the Department of Finance would send a report to the Legislature and publish a report on its website identifying employers with 100 or more public assistance beneficiaries.

This bill would also prohibit an employer from disclosing to any person or entity that an employee receives or is applying for public benefits, unless authorized by state or federal law and would prohibit an employer from discharging or in any manner discriminating or retaliating against an employee who enrolls in the Medi-Cal program and from refusing to hire a beneficiary for reason of being enrolled in the Medi-Cal program.

Adds and repeals § 13084 of the Government Code, amends § 1095 of the Unemployment Insurance Code, and adds and repeals § 11026.5 of the Welfare and Institutions Code.

Signed by the Governor on September 30, 2014. Chapter 889 of the Statutes of 2014.

Vetoed

Employment: Discrimination: Status as Unemployed AB 2271 Calderon

This bill would have effective July 1, 2015, generally prohibited discrimination against individuals who are presently unemployed. More specifically, the bill would have prohibited employers and employment agencies from (1) publishing job announcements that make an individual's current employment a job requirement, (2) affirmatively asking an applicant to disclose information regarding current employment status until the employer determines the applicant meets the minimum job qualifications, and (3) limiting an individual's access to information about job referrals for consideration of jobs because of his or her employment status (as to employment agencies only).

The bill would have authorized aggrieved individuals to file a complaint with the Labor Commissioner and have imposed civil penalties of \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each further violation. As sent to the Governor, the bill specifically did not provide for enforcement through private lawsuits.

Adds Chapter 3.95 (commencing with § 1045) to Part 3 of Division 2 of the Labor Code.

Vetoed by the Governor on September 17, 2014.

Franchises SB 610 Jackson

This bill would have made various provisions in franchise agreements unlawful. The provisions would have included things like waiver of the implied covenant of good faith and fair dealing, participation in an association of franchisees, sale or transfer of a franchise, and terminating a franchise agreement.

The bill would have amended §§ 20010, 20020, and 20035 of—and added Article 2.5 (commencing with § 20016) to—Chapter 5.5 of Division 8 of the Business and Professions Code.

Vetoed by the Governor September 29, 2014.

Agricultural Labor Relations: Contract Dispute Resolution SB 25 Steinberg

This bill would have modified the mandatory mediation procedures of the Agricultural Labor Relations Act regarding negotiating a collective bargaining agreement between an agricultural employer and a certified labor organization. Existing law provides that within 60 days of a decision by the Agricultural Labor Relations Board taking effect, a party may file an action to enforce the order, using specified procedures. Existing law provides that during the pendency of any appeal of the board's order, the order may not be stayed unless the appellant demonstrates that he or she is likely to prevail on the merits and that he or she will be irreparably harmed by implementation of the board's order.

The bill would have provided that an action to enforce the order of the board may be filed within 60 days whether or not the other party is seeking judicial review of the order. The bill would also have increased the evidentiary threshold for the court to grant a stay of the board's order. The new required showing would have been clear and convincing evidence that (1) that party would be irreparably harmed by the implementation of the board's order, and (2) that the party is likely to succeed on appeal. The new law would have required the court to make written findings supporting any order granting a stay of the order during the pendency of the appeal.

Amends § 1164.3 of the Labor Code.

Vetoed by the Governor September 28, 2014.

Significant Failed Bills

Employment: Violations: Good Faith Defense AB 2688 Brown

Until January 1, 2019, this bill would have permitted a person to raise an affirmative defense that violation of a statute or regulation regarding certain labor laws was done in good faith in reliance on a published opinion letter.

Adds and repeals § 98.73 of the Labor Code.

Re-referred to Com. on L. & E as of April 29, 2014.

Employees: Wage Disputes SB 919 Wright

This bill would have provided that if a party fails—without just and substantial cause—to timely provide the Labor Commissioner with change-of-address information after receipt of notice of a wage dispute claim, then that party is subject to treble the amount of all costs incurred by the opposing party in attempting to perfect service. The bill would also allow for a default to be taken against a defendant that has willfully evaded service of process to avoid responsibility for unpaid wages or penalties, under specified circumstances.

Amends § 98 of the Labor Code.

Referred to Com. on RLS March 17, 2014.

Minimum Wage: Annual Adjustment SB 935 Leno, Steinberg, De León, and Assembly Member Ting

In 2013, Governor Brown signed into law a bill that raised the minimum wage to \$9 an hour effective July 1, 2014, then \$10 an hour effective January 1, 2016.

This bill would have increased the minimum wage to \$11 in 2015, then an additional dollar for the next two years, followed by an annual automatic adjustment based on the California Consumer Price Index.

Amends § 1182.12 of the Labor Code.

Failed passage in committee. Reconsideration granted June 25, 2014.

2014 Legislative Calendar

Jan. 6, 2015 —Legislature reconvenes.

Direct comments and questions to:

Kristina Launey
Seyfarth California Legislative Team Leader
klauney@seyfarth.com
(916) 498-7034

www.seyfarth.com

Attorney Advertising. This Newsletter is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw — California Labor and Employment Legislation | October 2014