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LEGISLATIVE SUMMARY

With the expiration of the October 15th deadline for Governor Jerry Brown to sign or veto bills, the 2017 California legislative session came to a close. Not surprisingly, given the Legislature's current political composition and the fact Governor Brown is a member of the majority party, a number of significant employment laws were enacted, including laws that will:

- Prohibit employers from inquiring about salary history during the hiring process (AB 168);
- Preclude employers from inquiring about an applicant's conviction history until after a conditional offer of employment and impose new limitations upon and disclosure requirements for considering conviction history information (AB 1008);
- Require employers with between 20 to 49 employees to provide up to 12 workweeks of "parental leave" (SB 63);
- Prohibit employers from allowing federal immigration agencies access to worksites unless certain conditions are met (AB 450);
- Require that the currently mandated sexual harassment training for supervisors be expanded to include gender identity, gender expression, and sexual orientation (SB 396); and
- Expand the Labor Commissioner's powers when investigating retaliation complaints, including allowing pre-determination injunctive relief (i.e., temporary restraining orders) (SB 306).

Governor Brown also vetoed several bills, including bills that would have required employers to provide written copies of their Illness and Injury Prevention Programs (AB 978), prevented employers from taking adverse employment actions based on an employee's reproductive health decisions (AB 569), and required employers to gather and publish information concerning gender pay differences for exempt employees (AB 1209). As a reminder, 2017 was the first year of a two-year legislative cycle, so bills that were introduced in 2017 could resurface in 2018.

Separately in October, the Division of Labor Statistics and Research approved a slight increase in 2018 for the salary exemption levels for certain computer professionals (e.g., to $90,790.07 annually). Lastly, although there was not a new minimum wage law enacted in 2017, California's minimum wage will still increase for all employers (to $11.00 for employers with 26+ employees and to $10.50 for employers with 25 or fewer employees) on January 1, 2018 as the next phase of SB 3's annual increases take effect.

A summary of the bills signed by Governor is below, and unless otherwise indicated, these new laws take effect January 1, 2018:

NEW STATEWIDE BILLS

New Rules When Immigration Enforcement Agents Visit the Worksite (AB 450)

Work-related immigration topics have been a particular legislative priority recently, and this wide-ranging law continues that trend and highlights the current tension between California and the federal government

related to immigration. Amongst other things, it limits California employers from voluntarily complying with federal immigration authorities, imposes new notice requirements, and enacts many new statutory penalties.

For instance, while federal immigration laws previously allowed federal immigration agencies access to non-public portions of a worksite either through a warrant or the employer's consent, these new provisions essentially remove the employer's ability to provide consent and require a warrant or subpoena. Accordingly, new Government Code section 7285.1, "except as otherwise required by federal law," prohibits private or public employers or their agents from providing voluntary consent to allow an immigration enforcement agent access to enter non-public areas of a place of labor; instead, access may only be permitted if the enforcement agent provides a judicial warrant. However, this section does not prohibit employers or their agents from taking immigration enforcement agents to a non-public area, where employees are not present, for purposes of verifying whether the federal government immigration enforcement agent has a judicial warrant, provided the employer does not provide consent to search non-public areas in the process.

Similarly, new Government Code section 7285.2, "except as otherwise required by federal law," prohibits a private or public employer or their agents from providing voluntary consent to an immigration enforcement agent to access, review or obtain the employer's employee records without a subpoena or judicial warrant. This section also permits the employer or their agent to challenge the subpoena's validity in a federal district court. However, section 7285.2 does not apply to I-9 Employment Eligibility Verification forms if the employer has been provided a Notice of Inspection.

Both new sections authorize the California Labor Commissioner to recover civil penalties ranging from $2,000 to $5,000 for a first violation, and $5,000 up to $10,000 for each subsequent violation. For both sections, the penalties do not apply if the immigration enforcement agent obtained otherwise unauthorized access without the consent of the employer or the person in control of the place of labor. For purposes of assessing the penalties under both sections, "violation" means each incident when it is found a violation occurred without regard to the number of employees, the number of immigration enforcement agents involved in the incident, or the number of locations affected or employment records accessed/reviewed/obtained in a day.

For both sections, the Labor Commissioner or the California Attorney General have the exclusive authority to enforce through a civil action, and any penalties recovered shall be deposited in the Labor Enforcement and Compliance Fund.

This law also requires the employer to provide various notices related to immigration enforcement activity in the workplace. For instance, new Labor Code section 90.2 requires employers that receive a notice of inspection of I-9 records or other employment records by an immigration agency to post notice of this impending inspection. This notice must be posted within 72 hours of receiving notice of the inspection in the language the employer normally uses to communicate employment-related information to employees. This notice must include: (1) the name of the immigration agency conducting the inspection; (2) the date the employer received notice; (3) the nature of the inspection, if known; and (4) a copy of the Notice of Inspection of I-9 Employment Eligibility Verification Forms for the inspection to be conducted.

Notably, the Labor Commissioner will be required by July 1, 2018 to develop and publish on its website a template posting that employers may use to inform employees regarding an impending I-9 form

inspection by a federal immigration agency. Notably also, while earlier versions of AB 450 required the employer to affirmatively deliver written notice to each employee, the final version only requires that the notice be posted although employers must also provide, upon reasonable request, a copy of the Notice of Inspection of I-9 Employment Eligibility Verification Forms.

Once again except as required by federal law, the employer's notice obligations will continue after the inspection is concluded. Within 72 hours of receiving notice regarding the results of the records inspection, the employer must provide to each current "affected employee," and to their "authorized representative," a copy of the written immigration agency notice that provides the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records.

Employers also potentially have new notice obligations after the inspection is completed. Specifically, within 72 hours of receiving notice of the results of the employment record or I-9 forms inspection, the employer must provide to the "affected employee" and their "authorized representative" written notice of the employer's and affected employee's obligations arising from the results of this inspection. This notice shall relate to the affected employee only and must be hand-delivered at the workplace if possible, and if not, sent by mail and email, if the employer knows the employee's email address, and to the employee's authorized representative. This notice must contain the following information: (1) a description of all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee; (2) the time period for correcting any potential deficiencies identified; (3) the date/time of any meetings with the employer to correct the deficiencies; and (4) the employee's right to be represented during this meeting.

For purposes of this section, an "affected employee" means an employee identified during the immigration agency inspection as either lacking work authorization or whose work authorization documents have been identified as being deficient. An "authorized representative" means an exclusive collective bargaining representative.

As with Government Code sections 7285.1 and 7285.2, employers who fail to provide the notices required under section 90.2 are subject to civil penalties payable to the Labor Commissioner ranging from $2,000 to $5,000 for the first violation, and from $5,000 to $10,000 for each subsequent violation. However, unlike the statutory penalties in proposed new Labor Code sections 90.1 and 90.2 against employers who provide improper access, these statutory penalties are not required if the federal agency had specifically directed the employer not to provide notice to an affected employee.

Notably, while earlier versions of AB 450 also required the employer to provide advance notice of inspection to the Labor Commissioner, these requirements were deleted by amendment.

In 2016, the Legislature enacted SB 1001 and new Labor Code section 1019.1 prohibiting employers from engaging in various actions while determining the employment eligibility of an applicant or employee (e.g., refusing documents that appear reasonably genuine, requiring more or different documents, etc.). AB 450 enacts new Labor Code section 1019.2 to prohibit employers or their agents from re-verifying the employment eligibility of a current employee at a time or in a manner required under federal law. As with section 1019.1, new section 1019.2 authorizes the Labor Commissioner to recover civil penalties up to $10,000. However, it also provides that an employer's actions that violate new section 1019.2 could not also form the basis for liability or a penalty under current section 1019.1.

Perhaps anticipating future legal challenges, AB 450 provides its provisions are severable so that if any particular provision were invalidated, the remainder would still take effect.

Similarly, in an effort to prevent conflict with federal law, new Government Code section 7285.3 and subsection (f) in new Labor Code section 90.2 and subsection (c) in new Labor Code section 1019.2 clarify that these new provisions shall not restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

Job-Protected "Parental Leave" for Medium-Size Employers (SB 63)

Entitled the New Parent Leave Act, this law adds new Government Code section 12945.6 to require, beginning January 1, 2018, employers with 20 or more employees to provide up to 12 workweeks of job-protected parental leave for an employee (male or female) to bond with a new child within one year of the child's birth, adoption or foster care placement.

Unlike the California Family Rights Act (CFRA, Government Code section 12945.2) and the Family Medical Leave Act (FMLA), which apply only to employers with more than 50 employees, this law defines "employer" as either: (a) an entity employing 20 or more persons "to perform services for a wage or salary;" or (b) the state of California or any of its political or civil subdivisions, except for specified school districts. However, notwithstanding the definition of "employer" noted above (i.e., 20 or more employees), this law states that it will be an unlawful employment practice to deny parental leave to an employee who meets the hours and time-worked requirements (discussed below) and "works at a worksite in which the employer employs at least 20 employees within 75 miles." This latter language suggests that employees may be aggregated within the 75-mile radius to determine if the "employer" is subject to these new requirements, and allow an employee to take parental leave even if their particular worksite has fewer than 20 employees.

However, as with CFRA and the FMLA, an employee will need to have worked more than 12 months for the employer, and to have worked at least 1,250 hours during the previous 12-month period.

However, this new law does not apply to an employee subject to both the CFRA and the FMLA (with their 50 or more employee threshold), essentially meaning this new law is limited to employers with between 20 to 49 employees within 75 miles of the worksite where an employee works who wants to take parental leave.

This new law requires that employers provide up to 12 weeks of "parental leave" to bond with a new child within one year of the child's birth, adoption or foster care placement. Notably, however, while this new law arguably requires much smaller employers to provide one aspect of CFRA-related leaves (i.e., for baby-bonding) it does not requires these smaller employers to provide job-protected leave for other CFRA-related leaves (i.e., serious health condition of the employee or employee's family member).

Employees eligible for this new "parental leave" are also entitled to take leave under Government Code section 12945 (pregnancy disability, child birth, and related conditions) if otherwise qualified for such leave.

As with CFRA, an employer shall be deemed to have refused to provide this job-protected leave unless,

on or before the leave's commencement, the employer guarantees reinstatement in the same or comparable position. This law also authorizes the employee to use accrued vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off negotiated with the employer during this parental leave. The basic minimum duration of the leave shall be two weeks, but an employer would be permitted to grant requests for additional occasions of leave lasting fewer than two weeks.

Employers must also maintain and pay for an eligible employee's medical coverage under a group health plan for the duration of the parental leave, not to exceed 12 weeks over the course of a 12-month period, commencing on the date the parental leave begins, and at the level and conditions that would have existed if the employee continued working. However, as with CFRA, an employer may recover these premiums if an employee failed to return from leave under certain conditions.

Also as with CFRA, in situations where both parents are employed by the same employer, the employer may limit the overall leave to the maximum amount a single employee could use, and may but is not required to grant simultaneous leave to both parents.

This law also makes it an unlawful employment practice for any employer to refuse to hire, discharge, fine, suspend, expel, or discriminate against an individual for either exercising their right to parental leave, or giving information or testimony about their or another employee's parental leave in an inquiry or proceeding related to rights guaranteed under this section. It will also be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of any right provided under this section.

The bill also provides this leave shall run concurrently with parental leave taken under Education Code section 44977.5 for certain certificated school employees.

This section also provides that to the extent regulations implementing the CFRA are not inconsistent with this new leave, they shall be incorporated by reference to further implement this new leave.

Lastly, in response to Governor Brown's veto message of a very similar bill (SB 654), this bill also requires the Department of Fair Employment and Housing (DFEH) to create a "parental leave mediation pilot program" that would remain in effect until January 1, 2020. Once enacted after necessary funding is obtained, this program will enable employers to request mediation within 60 days of a right-to-sue notice being issued, in which case the employee cannot pursue any civil remedies until after the mediation is completed and the statute of limitations for all related claims shall be tolled. However, this mediation program will be voluntary, and either party may withdraw by notifying the mediator or the DFEH that they believe further mediation would be fruitless.

"Ban the Box" Bill (AB 1008)

The topic of when and how employers may consider criminal convictions continues to be a hot topic, both nationally and in California. For instance, in 2013, California enacted a law (AB 218) and added Labor Code section 432.9 precluding state agencies and cities from inquiring about or using information related to criminal conviction history except in specified instances. Similarly, in 2014 and 2016, the cities of San Francisco and Los Angeles, respectively, enacted "Fair Chance" Ordinances limiting how and when employers could consider criminal conviction information regarding applicants. The Fair Employment and

Housing Council recently issued final regulations regarding "Consideration of Criminal History in Employment Decisions" which took effect July 1, 2017.

Against this backdrop, AB 1008 amends the FEHA to preclude most employers from inquiring about an applicant's criminal record or conviction history until after a conditional employment offer is made, and imposes new notice and disclosure requirements if this information is sought.

Specifically, new Government Code section 12952 precludes employers with five or more employees from including on employment applications any question seeking the disclosure of an applicant's conviction history, or to otherwise inquire or consider the conviction history of an applicant, until after a conditional employment offer is made. It also precludes the consideration, distribution, or dissemination of the following specific items during any background checks: (a) arrests not followed by conviction (except where the applicant is seeking employment at specified health facilities or where after an arrest the applicant is out on bail or released on their own recognizance pending trial); (b) referrals to or participation in a pretrial or post-diversion program; or (c) convictions that have been sealed, dismissed, or expunged pursuant to law.

Before denying a position based upon an applicant's conviction history, the employer must also conduct an individualized assessment of whether the conviction history has a direct and adverse relationship with the specific duties of the position. In doing so, employers must consider all of the following: (a) the nature and gravity of the offense; (b) the time that has passed since the offense and completion of any sentence; and (c) the nature of the job held or sought. The law provides that employers may, but are not required to, commit the results of this individualized assessment to writing.

If an employer makes a preliminary decision the applicant's conviction history disqualifies them from employment, the employer must provide written notice of this preliminary decision to the applicant. While the employer may, but is not required to, justify or explain the employer's reason for making this preliminary decision, the notice must contain all of the following: (a) notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer; (b) a copy of the conviction history report, if any; and (c) an explanation of the applicant's right to respond to the employer's preliminary decision before it becomes final and the deadline for doing so. The notice in new subsection (c) must inform the applicant they may challenge the accuracy of the conviction history that is the basis for rescinding the offer, or submit evidence of rehabilitation or mitigating circumstances, or both.

The applicant will then have at least five business days to respond before a final employment decision can be made. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report at issue and is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.

Employers must also consider the applicant's response before making a final decision. If an employer makes a final decision to deny an applicant in whole or in part upon prior conviction history, the employer must notify the employee in writing of the following: (a) the final denial or disqualification; (b) any existing procedure the employer has for the applicant to challenge this decision; and (c) the right to file a complaint with the DFEH. As with the original notice regarding a preliminary decision to rescind, the employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.

Because this new law is codified in FEHA and applies to employers with five or more employees, it applies broadly. However, new section 12952 states it does not apply in the following specifically-enumerated exceptions contained in subsection (d): (1) for a position with a state or local agency required to conduct a conviction history background check; (2) for a position with a criminal justice agency, as defined in Penal Code section 13101; (3) for a position as a Farm Labor Contractor (as defined in Labor Code section 1685); and (4) for a position where an employer or agent is required by state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history, including the Securities Exchange Act.

This law further provides that "conviction" shall have the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of current Labor Code section 432.7. It further provides that notwithstanding that exception, "conviction history" includes an arrest not resulting in conviction for the specific, limited purposes enumerated in section 432.7 when an employer is a health facility (as defined) or an arrest for which an individual is out on bail or his or her own recognizance pending trial.

It also repeals current Labor Code section 432.9, recently added in 2013, which governs when state or local agencies may inquire about criminal convictions. These issues are now governed by the FEHA and the Government Code rather than the Labor Code.

Lastly, this bill specifies that it would not affect the rights and remedies afforded by any other law, "including any local ordinance[s]," which is potentially significant given the different requirements contained within the San Francisco and Los Angeles Fair Chance Ordinances.

Prohibition on Salary History Inquiries (AB 168)

This law adds new Labor Code section 432.3 to preclude employers from relying upon an applicant's salary history information as a factor in determining whether to offer employment to an applicant or what salary to offer the applicant. It also precludes employers from inquiring orally or in writing, personally or through an agent, about salary history information of an applicant, including about compensation and benefits.

There are a couple exceptions to this general restriction. First, it does not preclude an applicant from voluntarily, and without prompting, disclosing salary history information to a prospective employer, and if that voluntary disclosure occurs, this section does not prohibit the employer from considering or relying upon that voluntarily disclosed information in determining the salary for that applicant. Second, it does not apply to salary history information that is publicly available pursuant to California or federal law, including the California Public Records Act and the federal Freedom of Information Act.

This section also incorporates last year's amendments to California's Equal Pay Act (Labor Code section 1197.5) to make clear that prior salary history, by itself, cannot justify any disparity in compensation based on gender, race, or national origin.

This new law also requires employers, upon reasonable request, to provide an applicant the pay scale for a position. These new requirements apply to all employers, including state and local government employers and the Legislature.

Similar prohibitions on salary history inquiries have already passed in several states (Massachusetts, Oregon, and the District of Columbia), and several large cities (San Francisco, Philadelphia, and New York City) and are pending in other states and municipalities. The San Francisco version takes effect July 1, 2018, and has many similarities, but some differences including a prohibition on employers providing salary information regarding current or former employees without a written release to do so.

Public Employers Subject to Equal Pay Act Violations (AB 46)

California's Equal Pay Act (Labor Code section 1197.5 et seq.) has recently been a legislative focus with amendments in 2015 materially altering its definitions and exceptions (SB 358) and in 2016 to expand its protections to preclude impermissible wage differentials for employees of different races or ethnicity for substantially similar work (SB 1063). This law amends the Equal Pay Act to clarify that "employer" means both public and private employers, but that public employers are exempted from the statutory and misdemeanor penalties identified in Labor Code section 1199.

Hostile Work Environment Protections for Military Service Members (AB 1710)

California Military and Veterans Code section 394 previously prohibited any discrimination against an officer, warrant officer, or enlisted member of the military or naval forces of the state or the United States because of that membership, including with respect to employment. This law expands these prohibitions to include not only the denial of or disqualification from employment, but also the "terms, conditions or privileges" of that service member's employment. In effect, this law is intended to ensure that military service members are protected from a hostile work environment, which one court had held they were not since the then-existing text of section 394 was limited to discrimination and retaliation claims. In this regard, this law is also intended to provide statutory and enforcement consistency with the federal law protecting military service members (USERRA) since it already contained protections regarding "terms, conditions or privilege" and had been held to prohibit hostile work environments.

Expanded Harassment Training and New Poster Requirements (SB 396)

While California presently has the most expansive non-discrimination protections for lesbian, gay, bisexual, and transgender employees, this law is intended to further publicize these protections.

For instance, while Government Code section 12950 presently requires all employers to post the DFEH's poster prohibiting sexual harassment, it does not presently require employers to post the DFEH's recently published information poster on transgender rights at work. Accordingly, this law amends section 12950 to require all employers to post the DFEH's poster regarding transgender rights in a prominent and accessible location in the workplace.

The FEHA presently requires employers with more than 50 employees to provide at least two hours of training and education regarding sexual harassment and abusive conduct to all supervisory employees within six months of promotion and once every two years. This law amends Government Code section 12950.1 to require this training include the prevention of harassment based on gender identity, gender

expression, and sexual orientation.

Notably, the training and education must include practical examples inclusive of such harassment, and must be presented by trainers or educators with knowledge and expertise in those additional areas.

This law also amends California's Unemployment Insurance Code to specify that transgender and gender nonconforming individuals are included within the definition of "individuals with employment barriers" and therefore eligible for programs and services available under the California Workforce Innovation and Opportunity Act.

Expanded Harassment Training for Farm Labor Contractors (SB 295)

While California presently provides that farm labor contractor licenses will not be issued unless the applicant certifies certain employees have received sexual harassment training, this law expands these requirements. For instance, it requires that training for each agricultural employee be in the language understood by the employee. It also requires a licensee, as part of their application, to provide the Labor Commissioner with a complete list of sexual harassment training materials and resources utilized to provide sexual harassment training to the agricultural employees in the preceding year. It also requires the licensee to identify the total number of agricultural employees who received sexual harassment training, and for the Labor Commissioner to publish the total number of agricultural employees trained the previous calendar year.

Proposed new Labor Code section 1697.5 provides that failure to perform specified tasks related to such training would constitute a legal violation and authorize the Labor Commissioner to assess a civil penalty up to $100 for each violation. However, when enforcing this section, the Labor Commissioner shall consider whether the violation was inadvertent and may, in their discretion, decide not to penalize an employer for a first violation that was due to a clerical error or inadvertent mistake.

Expanded Labor Commissioner Powers (SB 306)

While Labor Code section 98.7 authorizes the Labor Commissioner to investigate discrimination and retaliation claims and order certain relief after an investigation and determination, this law materially expands these powers. For instance, new Labor Code section 98.7(a)(2) will permit the Labor Commissioner to commence an investigation, even without receiving a complaint, of an employer that it suspects retaliated against an individual in violation of any law under the Labor Commissioner's jurisdiction. It also authorizes the Labor Commissioner to proceed without a complaint in those instances where suspected retaliation has occurred during the course of adjudicating a wage claim under Labor Code section 98, during a field inspection pursuant to Labor Code section 90.5, or in instances of immigration-related threats in violation of sections 244, 1019, or 1019.1.

It also authorizes the Labor Commissioner to seek immediate temporary injunctive relief during an investigation and before a determination is made. Specifically, upon finding reasonable cause to believe an employer has engaged in or is engaging a violation, the Labor Commissioner may petition the superior court for appropriate temporary or preliminary injunctive relief. The court will be authorized to award such relief and may consider not only the harm resulting directly to an individual, but also the "chilling

effect" on other employees asserting their rights in determining whether temporary injunctive relief is appropriate.

Notably, if the employee has been discharged or faced adverse action for raising a claim of retaliation or asserting rights under any law within the Labor Commissioner's jurisdiction, the court shall order appropriate injunctive relief on a showing of reasonable cause. This law does not identify the injunctive relief available, but presumably it includes reinstatement or a stay on the adverse employment action. This injunction may remain in effect until the Labor Commissioner issues a determination or completes its review, whichever is longer, and the injunctive relief would not be stayed during an employer's appeal.

This law also amends section 98.7(c) to provide that if the Labor Commissioner is a prevailing party in an enforcement action under this section, the court "shall" award the Labor Commissioner its reasonable attorneys' fees and costs against the employer. It further provides that an employer who willfully refuses to comply with a court order to reinstate/rehire an employee or to post any required notice or to cease and desist shall also be liable for penalties up to $100 per day of non-compliance up to a maximum of $20,000. Any penalty collected pursuant to this section would be paid to the affected employee.

Presently, the Labor Commissioner must enforce a determination through a civil action. However, new Labor Code section 98.74 enables the Labor Commissioner, if it determines a violation has occurred, to issue a citation to the person responsible for the violation, directing that person to cease the violation and to take actions necessary to remedy the violation, including rehiring or reimbursement of lost wages and posting notices. Employers will have the ability to dispute the Labor Commissioner's determination by seeking judicial review in superior court but the burden is now on the employer to bring a court action to dispute the Labor Commissioner's determination rather than upon the Labor Commissioner to bring a court action to enforce its orders. Employers who willfully refuse to comply with a final order under this section, including failing to reinstate or post notices, will be subject to a civil penalty of $100 per day up to a maximum of $20,000.

Lastly, this law amends Labor Code section 1102.5, which authorizes employees to file civil actions related to whistleblowing, to allow employees to seek temporary or preliminary injunctive relief under proposed new Labor Code section 1102.62. Under this section, the employees may petition for injunctive relief, which the court could order as it deems just and proper. However, this temporary injunctive relief does not prohibit an employer from disciplining or terminating an employee for conduct unrelated to the retaliation claim.

Optional Commission Rules for Barbers and Cosmetologists (SB 490)

Responding to some recent confusion regarding the applicability of commission rules for beauty salon employees, this law is intended to clarify that such employees may be paid by commission if certain requirements are met. Specifically, while Labor Code section 204 identifies generally applicable payday rules, this law enacts new Labor Code section 204.11 to identify rules relating to the payment of commission wages paid to employees licensed under the Barbering and Cosmetology Act. If enacted, wages paid to such licensed employees, when paid as a percentage of a flat sum portion of the amount paid to the employer by the client recipient of such services, would constitute commissions provided that the employee is paid, in every pay period worked, a regular hourly rate of at least two times the state minimum wage in addition to commissions. Commission wages for such employees would be due and

payable twice during each calendar month on pre-designated paydays. It further provides that the employer and employee may agree on a commission in addition to the base hourly rate.

It also provides an employee may not be compensated for rest and recovery periods at a rate less than the employee's regular base hourly rate.

Essentially, this law permits commission pay for licensed professionals while creating a permanent wage floor of twice the state minimum wage.

Labor Law Training for Barbers and Cosmetologists (AB326)

Perhaps reflecting a new focus on the Barbering and Cosmetology sector, this new law will require the Board of Barbering and Cosmetology to provide increased training regarding physical/sexual abuse and "basic labor laws." This training would include, but not be limited to, information concerning: (1) key differences between the legal rights, benefits, and obligations of an employee and an independent contractor; (2) wage and hour rights of an hourly employee; (3) anti-discrimination laws relating to the use of a particular language in the workplace; (4) anti-retaliation laws relating to a worker's right to file complaints with the Department of Industrial Relations; and (5) how to obtain more information about state and federal labor laws.

General Contractors and Subcontractors Jointly Liable for Subcontractor Labor Code Violations (AB 1701)

Continuing California's recent trend of combatting wage theft, this law enacts new Labor Code section 218.7 to hold general contractors that contract with the state jointly liable with subcontractors at any tier for Labor Code violations. The direct contractor will be liable for any wage, fringe, or other benefit payment or contribution, including interest and state tax payment owed to a wage claimant by a subcontractor, but will generally not be liable for penalties or liquidated damages. Notably, unlike other recent wage theft statutes, this law does not require the worker or third party to exhaust his or her options before suing the general contractor, nor would the wage claimant need to first obtain a judgment against the subcontractor; rather, the wage claimant may proceed directly against the general contractor for the subcontractor's debts.

It also authorizes the wage claimant to sue directly or through the Labor Commissioner or district attorney, and prohibits the direct contractor from attempting to evade this law's requirements. Actions under this new section must be brought within one year of the earliest of either: (a) recording of notice of the direct contract's completion; (b) recording of notice of cessation of work on the direct contract; or (c) actual completion of work covered by the direct contract.

Special Advocacy Services for Employees Injured by Domestic Terrorism (AB 44)

This law responds to confusion about the applicability of workers' compensation laws and reported delays for medical treatment to employees injured during the San Bernardino terrorist attack. Accordingly, it adds new Labor Code section 4600.05 to require employers to provide immediate support from a nurse

case manager for employees injured in the course of employment by acts of "domestic terrorism," as defined by Title 18 of the United States Code. However, this new section only applies when the Governor has declared a state of emergency in connection with acts of domestic terrorism. If such a declaration is made, an employer with a pending claim for compensation based upon the acts resulting in this declaration shall provide within three days to the claimant advising these services are available. The workers' compensation administrative director shall adopt regulations related to this section and develop a notice that employers may use when needed.

Expanded Workers' Compensation Exception for Board of Director Members (SB 189)

This law is intended to modify the eligibility for business owners who are also employees of those businesses to voluntarily opt out of the legal mandate that all employees be covered by workers' compensation protections. While Workers' Compensation's definition of "employee" includes most officers and directors of private corporations, it presently excludes officers and directors of quasi-public or private corporations (as defined) who own at least 15% of the issued stock and sign a sworn written waiver of their status and intent to waive workers' compensation protections. This law amends Labor Code section 3352 and expands this exception to such officers or directors who own at least 10% (rather than the current 15%) of outstanding stock and execute a written waiver. It also expands this exception to owners of certain professional corporations who execute a written waiver of their workers' compensation rights and state under penalty of perjury that they are covered by a health insurance policy or health care service plan. Lastly, it also provides additional opt out options for members of cooperative corporations and close relatives of 10% owners of other companies.

These changes take effect on July 1, 2018.

Workforce Development Task Force (AB 1111)

Entitled the Removing Barriers to Employment Act, this law requires the Labor and Workforce Development Agency and the Labor Commissioner to create a grant program designed to identify and assist individuals with barriers to employment.

Health Facility Whistleblower Protections (AB 1102)

This industry-specific law amends Health and Safety Code section 1278.5, which prevents discrimination or retaliation against employees, patients, or customers who complain about health care-related violations. It increases the maximum fine for a misdemeanor violation of these provisions from $25,000 to $75,000.

As a Reminder, California's Minimum Wage Increases Again in 2018 (SB 3)

In 2016, California enacted SB 3, authorizing annual increases in the minimum wage until it reaches $15.00, and identifying a two-tiered schedule for the effective dates of these increases depending on whether the employer has more than 25 employees. On January 1, 2018, the minimum wage for

employers with 26 or more employees will increase to $11.00 per hour, meaning the salary threshold for exemption purposes will be $45,760 annually. On January 1, 2018, the minimum wage for employers with 25 or fewer employees will increase to $10.50 per hour, and the salary threshold exemption for those employers will be $43,680 annually.

DLSR Announces Increase in Computer Professional Salary for Exemption Purposes
Labor Code section 515.5 provides that certain software employees are exempt from overtime requirements if certain duties are met, including the performance of statutorily-enumerated duties and an hourly rate of pay not less than the statutorily-specified rate. The Division of Labor Statistics and Research (DLSR) is responsible for annually reviewing this rate to determine if any adjustments are needed for the following year, and usually makes such determination by the end of October. On October 3, 2017, the DLSR announced a slight increase to reflect a 2.9% increase in the California Consumer Price Index.

Accordingly, effective January 1, 2018, the computer software employee's minimum hourly rate of pay exemption will increase from $42.35 to $43.58, the minimum monthly salary exemption will increase from $7,352.62 to $7,565.85, and the minimum annual salary exemption will increase from $88,231.36 to $90,790.07.