

New Employment Laws. Are You Ready?**October, 2013**

The Governor has signed the last of this year's legislation. It was a busy year for new employment-related laws and an activist Legislature. Below are brief summaries of the new laws most likely to affect your organization. Unless indicated otherwise, these laws will go into effect January 1, 2014. For a full copy of the new laws, simply follow the links. Holden Law Group is here to support you if you have questions or concerns.

Increased Minimum Wage[AB 10](#)

- Increases the state minimum wage to \$9.00 per hour effective July 1, 2014.
- Increases the state minimum wage to \$10.00 per hour effective January 1, 2016.

Protected Leave for Training[AB 11](#)

- The bill amends Labor Code section 230.4 to specify that reserve peace officers and emergency rescue personnel are entitled to take up to 14 days of leave each year for the purpose of fire, law enforcement or emergency rescue training. This type of protected leave was previously applicable to volunteer firefighters only. Employers are required to provide this protected leave only if they have 50 or more employees.

Domestic Workers - Overtime[AB 241](#)

- Called the "Domestic Worker Bill of Rights," the bill creates new overtime rules applicable to some domestic workers.
- The bill has detailed definitions for the terms "domestic work," "domestic work employee," "domestic work employer" and "personal attendant." Domestic work only involves services provided in a private household, not a facility providing board or lodging. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing or elderly persons, house cleaners, housekeepers, maids and other household occupations. With numerous exceptions, a domestic work employee is any person who performs domestic work, including personal attendants. The traditional teenage babysitter is one notable exception.

Employment Retaliation - Immigration Related[AB 263](#)

- This bill significantly expands protection of undocumented workers and those workers suspected of

being undocumented workers as well as expanding protections for employees retaliated against because of complaints over the terms and conditions of employment. It creates and defines "unfair immigration-related practices" and establishes a presumption of unlawful retaliation where an employer engages in unfair immigration-related practices within 90 days of an employee's exercise of protected rights. The bill increases the civil penalty for retaliation against an employee up to an amount of \$10,000 per violation.

Background Checks - Private Schools

AB 389

- This bill requires private schools offering instruction for elementary or high school level students to comply with specified criminal background check procedures and prohibits the employment of a person who has not submitted to and been approved through the procedures.
- Note: Ironically, the Governor also signed AB 218 which prohibits public employers from obtaining information about applicants' criminal convictions until the employer has determined that "the applicant meets the minimum employment qualifications" for the job.

Failure to Pay Minimum Wage - Liquidated Damages

AB 442

- This bill expands the penalty and restitution provisions in cases where an employer fails to pay an employee at least minimum wage. The bill adds to the penalties liquidated damages in the amount of any unpaid wages and the interest on such wages.

Military and Veteran Status Protection

AB 556

- This bill adds "military and veteran status" to the list of protected categories under the California Fair Employment and Housing Act (FEHA). Discrimination protection for military personnel and veterans existed in other areas of the law, but not specifically in the FEHA.

Prevailing Wage Law Changes

AB 1336

- This bill makes several potentially significant changes to California prevailing wage law. The bill increases by one year the amount of time that the government has to issue a civil wage and penalty assessment against an employer found to have violated any of the public works rules relating to prevailing wages. The government will now have up to 18 months after the filing of a valid notice of completion or 18 months after the acceptance of the public works project, whichever occurs last. The bill likewise increases the amount of time within which a joint labor-management committee is authorized to file a civil action against an employer, and specifies that in such an action a court shall award: (1) restitution to an employee for unpaid wages; (2) interest; (3) liquidated damages equal to the amount of unpaid wages; and (4) attorneys' fees and costs, including expert witness fees. A court may also award civil penalties and equitable relief as it deems appropriate.

- This bill also changes the form of payroll records that must be provided by an employer to a joint labor-management committee. Previously, the employer was permitted to mark over or remove the employees' names and social security numbers. This bill provides that only the social security numbers may be marked over or removed. For records requested by a multi-employer trust fund, the last four digits of the social security number may not be marked out or removed.

Automatic Liens Against Employers

[AB 1386](#)

- This bill provides that when an employee complaint filed with the Labor Commissioner's office is resolved in favor of the employee and not appealed by the employer, a lien is automatically created and the Labor Commissioner may file a certificate of lien against the employer's property.

Work Sharing Plans

[AB 1392](#)

- Currently employers may develop "work sharing" plans which reduce employees' hours of work and are designed to reduce layoffs and stabilize the work force. Once the plan is approved by the EDD, the employees with reduced hours become eligible for unemployment insurance benefits to make up for the reduction of hours.
- This bill limits the benefits of work sharing plans to those plans that become effective before July 1, 2014 and prohibits the renewal of work sharing plans on or after July 1, 2014.

System and Data Breaches Involving Personal Information

[SB 46](#)

- Existing law requires any employer that owns or licenses computerized data which includes "personal information" about employees to notify the employees of any breach of security of the employer's systems or data. The method of notification is specific and detailed. "Personal information" was defined as the employee's name in combination with any of the following types of information: (1) social security number; (2) driver's license number; (3) California identification card number; (4) medical information; (5) health insurance information; or (6) account number or credit or debit card number in combination with a password or security code that would permit access to the employee's financial account.
- This bill expands the definition of "personal information" to include any username or email address, in combination with a password or security question and answer that would permit access to an online account. The bill also modifies the required method of notification where the system or data breach involved personal information related to an online account.

Prevailing Wages - Contractors at Chemical Processing Facilities

[SB 54](#)

- This bill provides that owners or operators of chemical manufacturing or processing facilities must require any contractors hired to perform construction, alteration, demolition, installation, repair or

maintenance work at the facility to use a "skilled and trained workforce." "Skilled and trained workforce" is defined to mean registered apprentices or skilled journeypersons and where the journeypersons are paid not less than the prevailing wage and have specialized safety training. The bill contains detailed definitions and several exceptions.

Farm Labor Contractor Liability

[SB 168](#)

- This bill provides that any farm labor contractor "successor" to a farm labor contractor that owed wages or penalties to an employee shall be liable for the wages and penalties. The bill sets forth specific conditions under which the "successor" will have an affirmative defense to the liability.

Protected Time Off for Victims Expanded

[SB 288](#)

- This bill expands an employee's right to take protected time off from work where the employee is a "victim" of specified crimes. The specified crimes are fairly numerous and include vehicular manslaughter, felony child abuse, felony stalking and felony DUI causing injury. The term victim is defined as any person who suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term victim also includes the person's spouse, parent, child, sibling or guardian.

Proof of Sexual Harassment Claims

[SB 292](#)

- The bill adds the following sentence to the California Fair Employment and Housing Act: "Sexually harassing conduct need not be motivated by sexual desire." The bill does not preclude a plaintiff from proving sexual intent or desire. It merely clarifies that sexual intent or desire is not a requirement in proving sexual harassment.

Prevailing Wage Law Procedural Changes

[SB 377](#)

- This bill makes changes to the authority and procedures used by the Director of Industrial Relations in making the determination that a specific project is a "public work" project. The bill also provides that the statute of limitations on actions against a contractor for prevailing wage violations is tolled (extended) for the period of time the Director takes to make the determination.

Employer Failure to Remit Withholdings - New Crime

[SB 390](#)

- This bill makes an employer's willful failure to remit employee withholdings to the various government agencies a crime. If the amount in question exceeds \$500, the crime is punishable by imprisonment and a fine or both.

Reasonable Accommodations for Victims of Crime and Stalking

SB 400

- This bill provides that victims of stalking are entitled to the same anti-discrimination and protected time off provisions that apply to victims of sexual assault and domestic violence. The bill also adds a requirement that employers provide reasonable accommodations for victims of sexual assault, domestic violence and stalking where an employee requests the accommodation for safety at work. The bill specifies that reasonable accommodations may include transfer, reassignment, modified schedule, changed work telephone, changed work station, the installation of locks and assistance in documenting domestic violence, sexual assault or stalking that occurs in the workplace.

Recovery Periods Penalty

SB 435

- This bill defines a "recovery period" as a cool down period afforded to an employee to prevent heat illness, and specifies that recovery periods will be treated like mandated meal and rest breaks. An employer is prohibited from requiring an employee to work during a recovery period. If the employer fails to provide a recovery period in accordance with the law, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay.

Attorneys' Fees and Costs in Wage/Hour Cases

SB 462

- This bill amends Labor Code section 218.5 to make it more difficult for employers to recover attorneys' fees and costs in wage and hour actions brought by employees and former employees. An employer who is the prevailing party in an action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions is entitled to recovery attorneys' fees and costs only if the court finds that the employee brought the court action in bad faith.

Criminal History Information

SB 530

- This bill prohibits an employer from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a criminal conviction that has been judicially dismissed or ordered sealed. The prohibition does not apply where the employer is required by law to obtain the information in the application process or where the employee will be required to use or possess a firearm on the job.

Retaliation - Reporting Suspected Citizenship or Immigration Status

SB 666

- This bill specifies that reporting on the suspected citizenship or immigration status of an employee or an employee's family members constitutes an adverse employment action supporting an employee's claim for unlawful retaliation.

- The bill also prohibits businesses and professionals licensed by the state from retaliating against an individual by reporting the suspected citizenship or immigration status of an employee or an employee's family members. Violations can result in the revocation or suspension of the business or professional license. The bill also provides for the suspension, disbarment or other discipline of attorneys who report the suspected citizenship or immigration status of a party or witness or that person's family members where the party or witness has exercised a right related to his or her employment.

Family Temporary Disability Insurance Program (aka Paid Family Leave)

[SB 770](#)

- Under existing law, the family temporary disability insurance program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.
- This bill would, beginning on July 1, 2014, expand the scope of the family temporary disability program to include time off to care for a seriously ill grandparent, grandchild, sibling or parent-in-law.

Employer Credits under Prevailing Wage Law

[SB 776](#)

- Existing law provides that employers must pay workers on public works projects the mandated prevailing wage. Some payments made by employers may be taken as a credit against the prevailing wage obligation.
- This bill permits employers to take credit for certain specified payments, even if those payments are not made during the same pay period for which credit is taken, if the employer regularly makes those payments on no less than a quarterly basis.
- This bill prohibits the granting of credit for employer payments made to monitor and enforce laws related to public works if those payments are not required by a collective bargaining agreement.

Some of these new laws are likely to have a significant impact on employers. We will be analyzing the impact in the coming months and providing you with in-depth analysis in selected cases. In the meantime, if you have immediate questions or concerns about the new legislation, call us and we will be your resource and partner in navigating the changes.

Sincerely,

Holden Law Group