California Legislative Developments

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LEGISLATIVE RECAP

The California Legislature has returned from its summer recess, with a fairly large number of employment bills to consider before the August 31st deadline for bills to pass the legislature and be sent to Governor Jerry Brown for signature or veto. Some of the more noteworthy bills under consideration are bills to mandate paid sick leave (AB 1522), to allow employee to obtain pre-judgment liens against employers in wage disputes (AB 2416), and that would make employers jointly responsible for another party's employees in certain circumstances (AB 1897). The Governor will then have until September 30th to sign or veto bills sent to him.

Concurrently, several municipalities are considering fairly significant employment-related bills, meaning state-wide employers may need to consider both the California Labor Code as well as municipal-level ordinances. For instance, San Diego is considering increasing the minimum wage above the amount required under California law, and is considering mandating paid sick leave in an amount greater than contemplated under AB 1522. Similarly, and as a reminder, San Francisco's Fair Chance Ordinance took effect August 13, 2014, limiting when certain private employers can consider criminal-record information. These municipal-level ordinances are discussed after the "new state-wide laws" update.

NEW STATE-WIDE LAWS ENACTED IN 2014

Although the majority of bills introduced in 2014 remain pending, several bills have already passed the Legislature and been signed into law during this session. These bills take effect January 1, 2015, unless otherwise noted, and are listed below. The new laws enacted since the last report are listed first, followed by the new laws enacted in 2014 but which were initially discussed in earlier reports:

Governor Brown Signs the "Child Labor Protection Act" (AB 2288)

Known as the Child Labor Protection Act of 2014, this bill enacts a new Labor Code provision (section 1311.5) to provide additional remedies for violations of California's laws regarding employment of minors. For instance, the statute of limitations for claims related to the employment of minors shall be tolled until the individual allegedly aggrieved by the unlawful employment practice reaches 18 years of age. The bill specifies that this provision is declarative of existing law, meaning it applies retroactively.

This law also authorizes individuals who are discriminated or retaliated against because they filed a claim alleging a child labor violation to receive treble damages in addition to any other legal remedies available. Lastly, while Labor Code section 1288 presently identifies certain "classes" of violations resulting in statutorily-enumerated penalties, this law imposes a civil penalty of $25,000 to $50,000 for each violation involving minors less than 12 years of age.

Governor Brown Signs Law Approving Expedited Workers' Compensation Proceedings Involving Illegally Uninsured Employers (AB 1746)

California's Workers' Compensation system requires the administrative director to establish a priority conference calendar for cases in which the employee is represented by an attorney and the disputed issues are employment or injury (as specified). This law amends Labor Code section 5502 to require that cases in which the employee is or was employed by an illegally uninsured employer and the disputed issues are employment or injury (as specified), be placed on this priority conference calendar.

Governor Brown Signs Law Permitting Employers to Report Workplace Injuries via Email Rather than Telegraph

Although Labor Code section 6409.1 has long required employers to immediately notify the Division of Occupational Safety and Health of an employee's serious injury, illness or death, this section had not been updated recently, and so it required the employer to provide this notice via telephone or telegraph. This new law amends section 6409.1 to enable the employer to make such reports via telephone or email, and it deletes language authorizing the use of a telegraph.

New Law Clarifies Rest and Recovery Periods are to be Counted as Hours Worked (SB 1360)

Labor Code section 226.7 presently precludes employers from requiring employees to work during any meal, rest, or recovery period, and to pay an additional hour of pay at the employee's regular rate of pay for each workday a meal, rest, or recovery period is missed. (In 2013, California enacted SB 435 adding the language regarding "recovery periods" to the then-existing version of section 226.7.) Responding to concerns that employers were not sure if rest or recovery periods needed to be paid, this law amends section 226.7 to specify that rest or recovery periods required under state law shall be counted as hours worked for which there shall be no deduction from wages. The bill's proponents state that this language was mistakenly omitted from SB 435 during the 2013 legislative session.

Because it specifically states it is declarative of existing law, this law is immediately effective and likely applies retroactively.

Clarifying Amendments Enacted Regarding "Immigration-Related" Retaliation Protections (AB 2751)

This "clean up" bill makes relatively-minor changes to several measures enacted last year to protect immigrant workers against unlawful retaliation. For instance, in 2013, California enacted AB 263 and SB 666 which, in turn, enacted Labor Code section 1019 prohibiting employers from engaging in various "immigration-related practices" against persons who had exercised certain rights protected under state labor and employment laws. These immigration-related practices included threatening to file or filing a false

police report. This bill expands this particular provision to also include the threatening to file or the filing of a false report or complaint with any state or federal agency, not just the police.

Newly-enacted section 1019 also authorizes the court to order, upon application of a party or upon its own motion, the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations. These amendments clarify that the licenses to be affected would be "specific to the business location or locations where the unfair immigration-related practice occurred," rather than potentially state-wide.

Last year's bills also added subsection (b)(3) to Labor Code section 98.6 to authorize a $10,000 penalty against an employer per employee for each violation. Since last year's amendment did not specify to whom this penalty would be awarded, this new law specifies these penalties shall be "awarded to the employee or employees who suffered the violation."

In 2011, AB 22 enacted Labor Code section 1024.5 limiting an employer's ability to use consumer credit reports, and in 2013 AB 263 enacted Labor Code section 1024.6 prohibiting employers from retaliating against employees who update their "personal information." Because AB 263 did not define "personal information," this law further amends section 1024.6 to specify that employers may not discharge or discriminate against employees who update their personal information "based on a lawful change of name, social security number or federal employment authorization document." Responding to employer concerns, these amendments also specify that "an employer's compliance with this section shall not serve as the basis for a claim of discrimination, including any disparate treatment claim."

NEW MUNICIPAL LAWS

City of San Diego Ordinance Considering Increasing Minimum Wage and Requiring Paid Sick Leave

The City of San Diego recently made headlines when its City Council overwhelmingly passed an ordinance to increase San Diego's minimum wage beyond the state level, and to require paid sick leave beyond that contemplated in AB 1522 or that currently required in San Francisco. The ordinance's legal status, as well perhaps as its final iteration, is in currently in flux given recent political events.

Specifically, on August 8, 2014, Mayor Kevin Faulconer vetoed the ordinance passed by the San Diego City Council (by 6-3 majority vote) providing for earned sick leave and a minimum wage increase for employees working within the City of San Diego (adding Article 9, Division 1, sections 39.0101 through 39.0115, to Chapter 3 of the San Diego Municipal Code). However, on August 18, 2014, the San Diego City Council overrode this veto by a 6-2 vote, meaning this Ordinance will take effect January 1, 2015, unless the San Diego business community obtains enough signatures for a city-wide referendum.

(The business community has recently prevailed through two such referendums.) The business community presently has until September 17, 2014, to obtain the requisite number of signatures.

Employers should continue to monitor these developments, but we will quickly identify below the current proposed requirements so employers can assess whether to weigh in or to begin assessing compliance.

If enacted, the ordinance would apply to employees who perform at least two hours of work within the City of San Diego during one or more calendar weeks of the year, and qualify for payment of a minimum wage under California law. It would not apply to an employee who is: authorized by the Labor Code to be paid less than minimum wage; employed under a publicly subsidized summer or short-term youth employment program; or a student employee, or camp or program counselor of an organized camp as defined in the Labor Code. It also would not apply to independent contractors.
The City of San Diego's geographic limits, by zip code, may be found on the City's website at the City Council button.

Proposed Minimum wage: The new minimum wage would apply for each hour worked within the City of San Diego and the hourly rate will be as follows (except if the California or federal minimum wage is greater, then that greater wage will be matched):

- Starting January 1, 2015: $9.75;
- Starting January 1, 2016: $10.50;
- Starting January 1, 2017: $11.50; and
- Starting January 1, 2019, and each year after: an increase by the amount corresponding to the prior year's increase in the cost of living (per Consumer Price Index).

***Proposed Earned Sick Leave*:** Employees must be provided with one hour of sick leave for every thirty hours worked within the City of San Diego, but employers are not required to provide more than forty hours in a benefit year, defined as a consecutive twelve-month period as determined by the employer (except to allow accrual of sick leave and carry-over of unused leave to the following year), or in less than one-hour increments for a fraction of an hour worked. Earned sick leave must be compensated at the same hourly rate or other measure of compensation as the employee earns from employment. Employers who provide paid sick leave, vacation or personal time-off that meets the requirements of this section are not required to provide additional sick leave.

Earned sick leave would begin to accrue at the start of employment, or on April 1, 2015, whichever is later. Employees would be entitled to use sick leave on the 90th day after the start of employment, or on July 1, 2015, whichever is later. Employees not covered by overtime law are assumed to work forty hours each work week, unless their regular

workweek is less, and then it accrues based upon that regular work week. Employers may set a minimum increment for the use of sick leave not to exceed two hours.

Earned sick leave may be used:

- if the employee is physically or mentally unable to perform their duties;
- to seek diagnosis or treatment for a medical condition;
- for other medical reasons such as pregnancy or a physical exam;
- to provide care to a family member [child, spouse (including domestic partner), parent, grandparent, grandchild, sibling, or spouse's child or parent] with a medical condition, or needing diagnosis or treatment for a medical condition;
- for time away from work necessary due to domestic violence, sexual assault or stalking, including for medical attention, counseling, relocation or legal services; or
- due to a closure of the workplace or child's school based on a public health emergency as declared by a public official.

Employers may require reasonable notice of the need to use sick leave, meaning as soon as practicable if the leave is not foreseeable, and advance notice not to exceed seven days where foreseeable. For an absence exceeding three days, employers may require documentation signed by a licensed health care provider that the amount of leave is needed, but not specifying the nature of the medical condition.

Other requirements: The City of San Diego will provide employers with notices to post in the workplace regarding the earned sick leave and minimum wage ordinance by April 1, 2015, and in subsequent years. Employers must also provide at time of hire or by April 1, 2015 (whichever is later), written (or accessible electronic) notice of the employer's name, address and phone number and the requirements of the ordinance in English, and in the employee's primary language if spoken by at least 5% of the workforce at the employee's job site and translated into ballot materials by the San Diego County Registrar of Voters.

Records documenting employee wages, and the accrual and use of sick leave, must be retained for three years.

It will be unlawful for any employer to retaliate against an employee for exercising any right provided under the ordinance. Any employee who reasonably and in good faith reports a violation of the ordinance to the employer, or a governmental agency that enforces wage and hour law applicable to the employer, is protected under the ordinance.

The City Council will designate an Enforcement Office to enforce the ordinance and to receive and adjudicate complaints. The City or any person claiming harm from a violation of the ordinance may bring an action in court against the employer and seek all remedies available, including but not limited to, back pay, liquidated damages of double back pay, (unspecified) equitable damages for wrongfully denied sick leave, reinstatement, injunctive relief, and reasonable attorneys' fees and costs to any prevailing plaintiff (including the City). A complaint to the Enforcement Office is not a prerequisite to bringing a private action.

Employers who violate the ordinance shall be subject to a civil penalty of $1,000 per violation, except that failure to comply with notice and posting requirements is subject to a civil penalty of $100 for each employee not given proper notice, up to a maximum of $2,000.

For additional details, please see the following link:
http://dockets.sandiego.gov/sirepub/cache/2/ctv5vdqma5pq4hohrijjv0hs/7020620801201401425052.PDF

San Francisco's "Fair Chance" Ordinance Takes Effect, Limiting When Private Employers Can Obtain or Use Criminal Record Information

Taking effect August 13, 2014, San Francisco's Fair Chance Ordinance (San Francisco Police Code, Article 49) (FCO) restricts a private employer's ability to obtain and use criminal history information. As with other San Francisco ordinances, the FCO is very detailed and not only establishes new processes and prohibitions, but also imposes new posting, notice, record-keeping and disclosure requirements upon employers. More information and detail about the FCO is available on the San Francisco Office of Labor and Standards Enforcement's (OLSE) website: http://sfgsa.org/index.aspx?page=6615. The San Francisco OLSE has also posted some "Frequently Asked Questions," providing further FCO-related information:
http://sfgsa.org/modules/showdocument.aspx?documentid=12136.

Who is affected?

The FCO applies to private employers that are located or doing business in San Francisco and that employ 20 or more persons worldwide, regardless of where they are located. For instance, if the employer has 20 employees worldwide, but one working in San Francisco, the FCO applies to the one employee working in San Francisco. This 20-person threshold includes owners, management and supervisory employees, and job placement, referral agencies and other employment agencies are considered employers.

As mentioned, the FCO applies to employee positions located within San Francisco, regardless of where the employer is located, as long as the position is "in whole or in substantial part, within the City." The OLSE interprets "in substantial part" to mean an average of 8 hours of work performed a week in San Francisco. The FCO's requirements apply to applicants, potential applicants for employment, and employees, meaning it

applies to hiring decisions as well as employment-related decisions for existing employees. It also applies to all forms of employment, including full-time or part-time, temporary or seasonal, contracted or contingent work, work on commission, work through a temporary agency, or any form of vocational or educational pay.

Limits Obtaining Criminal Records Information

As with other "ban the box" statutes seeking to remove pre-employment hurdles, the FCO limits "when" and "how" employers may obtain information about an applicant's conviction and "unresolved arrests." ("Unresolved arrest" is an arrest that is undergoing an active pending investigation or trial that has not yet been resolved.) Generally, an employer can only ask about an applicant's unresolved arrest or conviction history after the employer has either (1) conducted a live interview with the applicant; or (2) made a conditional offer of employment to the applicant. Even then, however, the FCO identifies the following categories of information that is "OFF LIMITS" and can never be asked about, sought out, or considered by an employer under any circumstances, at any stage of the hiring process:

- An arrest not leading to a conviction -- except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction that is more than seven years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor, such as an infraction.

In addition to delaying such inquiries until after an interview or conditional job offer, and in addition to avoiding these "OFF LIMITS" inquiries, an employer interested in obtaining criminal background information must also comply with generally applicable state and federal requirements including, but not limited to, those in the California Investigative Consumer Reporting Agencies Act (ICRAA) and the Federal Consumer Reporting Act (FCRA).

The FCO also establishes new guidelines employers must follow before it obtains such information, in its consideration of such information, and before it makes a decision based upon such information. For instance, if an employer intends to ask about an applicant's unresolved arrest or conviction history, it must provide a copy of the OLSE's official notice, and the OLSE recommends employers do so at the start of the hiring process. A copy of this notice is available at: http://sfgsa.org/modules/showdocument.aspx?documentid=11600. As mentioned, if the

employer intends to obtain a background check report on an applicant, it must comply with applicable state and federal laws (e.g., ICRAA and FCRA) and notify the applicant such a report is being sought.

If an employer intends to make an employment decision based on the applicant's unresolved arrest of conviction history, the employer must conduct an "individualized assessment." The OLSE FAQ's provide this means considering only "directly-related convictions" that have a "direct and specific negative bearing on that person's ability to do the job." These FAQ's state the employer must consider whether the employment position offers the opportunity for a same or similar offense to occur, and whether the circumstances leading to conduct underlying the prior conviction will recur in the employment position. The employer must then also consider how much time has elapsed since the prior conviction or unresolved arrest, potential inaccuracies in the applicant's conviction history, evidence of the applicant's rehabilitation, and other "mitigating factors."

The FCO also enumerates a specific procedure if an employer intends to deny employment to an applicant or take other adverse action against an employee because of an applicant's unresolved arrest or conviction record. Specifically, the employer must provide the applicant a copy of the background check report (if any) and explain to the applicant which aspect of their unresolved arrest or conviction history is motivating the adverse action. The employer must also give the applicant at least seven days to inform the employer that there are inaccuracies in the unresolved arrest or conviction record, or that there is evidence of rehabilitation or other mitigating factors. The employer must then delay any adverse action for a reasonable period and reconsider the adverse action if the applicant provides such information, and hold the position open during the process.

Notice, Posting and Record-Keeping Requirements

Not surprisingly, employers are prohibited from disseminating any job solicitation or advertisement that directly or indirectly suggests an applicant with an arrest or conviction record will not be considered for or may not apply for employment.

In addition to this prohibition, however, the FCO also requires employers make affirmative statements concerning their FCO compliance. Specifically, employers covered by the FCO must include in all job ads or solicitations (including on-line job postings) reasonably likely to reach persons reasonably likely to seek employment in San Francisco a statement that the employer will consider qualified applicants with criminal histories in a manner consistent with the FCO. Employers may craft their own version of this statement, but the OLSE has also published the following example that would satisfy these requirements – "Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records."

Employers must also post in a conspicuous location at every workplace an OLSE-provided notice about employee rights under the FCO. This notice is available at http://sfgsa.org/modules/showdocument.aspx?documentid=11600. Employers must post

this notice in English, Spanish, Chinese, Tagalog and any other language spoken by five percent or more of the employees in the workplace, job site or other location. However, while the OLSE has published translations of this notice in Chinese, Spanish and Tagalog, employers are responsible for providing posters in any other language spoken by at least five percent of the employees at the workplace or job site.

Employers must also maintain and retain for a period of three years records documenting compliance with the FCO. The OLSE's FAQs suggest these records include, but are not limited to:

- documentation showing the OLSE FCO Notices were posted;
- any background check reports obtained;
- copies of job ads and postings;
- job application forms distributed;
- job applications submitted by applicants;
- documentation of employment interviews including forms, notes, and interview questions;
- any information provided to an applicant regarding potential adverse action;
- any information received from an applicant or employee in response to a background check;
- documentation of all individualized assessments conducted;
- any documentation of rehabilitation or mitigating factors submitted by applicants or employees; and
- documentation of adverse actions based on unresolved arrest or conviction records.

An employer that fails to maintain or retain adequate records documenting compliance, or does not allow the OLSE reasonable access to such records, is presumed to have violated the FCO, absent clear and convincing evidence otherwise.

Employers will also be required to submit an annual reporting form to the OLSE, which the OLSE will develop and publish annually on its website.

Non-Retaliation and Enforcement

The FCO enumerate a number of non-exhaustive rights, including the right to:

- file a complaint about an employer's alleged violation of the FCO;
- inform any person about an employer's alleged violation of the FCO;
- cooperate with the OLSE or other persons in the investigation or prosecution of any alleged FCO violation;
- oppose any policy, practice or act unlawful under the FCO; and
- inform any person of his/her rights under the FCO.

The FCO prohibits any discrimination or retaliation against an individual for exercising these rights under the FCO, and creates a rebuttable presumption of retaliation if the employer takes any adverse action within 90 days of an individual exercising their rights under the FCO. The employer will then bear the burden of demonstrating the adverse action was taken for a legitimate, non-retaliatory reason.

The OLSE is responsible for administering and enforcing the FCO, and has the authority to issue penalties for each individual whose rights were violated, with the amount depending upon the number of violations. (For violations occurring prior to August 13, 2015, the OLSE will only issue warnings, notices to correct, and offer the employer guidance on FCO compliance.) The OLSE may also bring a civil action against the employer and may recover reinstatement, back pay, benefits, liquidated damages of $50 per individual for each day of a violation, injunctive relief, and attorneys' fees and costs.

CURRENTLY PENDING STATE-WIDE BILLS

Paid Sick Leave Bill Continues to Advance (AB 1522)

Known as the "Healthy Workplaces, Healthy Families Act of 2014," this bill would implement a number of new Labor Code provisions (section 245 *et seq.*) requiring employers to provide paid sick leave for their employees. This bill would apply to all employers regardless of size, including public employers, the state, and municipalities.

After July 1, 2015, employees who work in California for thirty or more days in a calendar year would accrue paid sick leave at a rate of no less than one hour for every 30 hours worked. Exempt employees would be deemed to work 40 hours per week for accrual purposes, unless their normal workweek schedule is less than 40 hours, in which case they would accrue paid sick leave based upon that normal workweek.

Employees would be entitled to use accrued paid sick days beginning on the 90th calendar day of employment, after which they may use paid sick days as they are accrued. Employers would also have the discretion to lend paid sick days to an employee in advance of accrual, and employers could not require employees to locate a replacement worker to cover days on which an employee uses paid sick days.

While accrued paid sick days shall carry over to the following calendar year, employers may limit an employee's use of paid sick leave to 24 hours, or three days, in each calendar year. Employers would not be required to compensate employees for unused sick days upon employment ending, but they would be required to reinstate the previously unused balance if they rehired the employee within one year.

Employees would be entitled to use paid sick time for preventive care for themselves or a family member, as well as for the diagnosis, care, or treatment of their or their family member's existing health condition. For purposes of this bill, "family member" means a (1) child (as defined), (2) parent (as defined), (3) spouse, (4) registered domestic partner, (5) grandparent, (6) grandchild, or (7) sibling. The employer shall also provide paid sick

days for an employee who is a victim of domestic violence, sexual assault, or stalking, as discussed in Labor Code sections 230 and 230.1.

The bill states it is not intended to preclude employers from implementing more generous policies. Also, an employer shall not be required to provide additional sick pay under this bill if the employer already has a paid leave or paid time off policy that permits accrual at the same rate or more, and the accrued time is to be used for the same purposes and under the same conditions as in this bill.

Like many other recent Labor Code amendments, this bill also contains carve-outs for employees covered by collective bargaining agreements (CBAs) with certain provisions. Specifically, this bill would not apply to employees covered by CBAs that expressly provide for the wages, hours of work, and working conditions of employees, as well as for paid sick days (with final and binding arbitration for any disputes regarding paid sick days), premium wage rates for all overtime, and a regular hourly rate of not less than 30 percent more than the state minimum wage.

Similarly, construction industry employees covered by a CBA with these provisions would also not be covered by this bill if the CBA was entered into before January 1, 2015, or if the CBA expressly waives the requirements of "this article" in clear and unambiguous terms.

This bill would also prohibit discrimination or retaliation against employees for using accrued sick days, or for filing a complaint regarding any sick day policy violation. However, similar to last year's protections against "immigration-related practices" (AB 263), this bill would create a rebuttable presumption of unlawful retaliation if an employer takes an adverse employment action (including denying the right to use sick days) within 30 days of an employee (1) filing a complaint with the Labor Commissioner or in court alleging violations of this article; (2) cooperating with an investigation or prosecution of an alleged violation of this article; or (3) opposing a policy, practice or act that is prohibited by this article. (A proposed 90-day presumption was reduced to the current 30-day presumption in a recent amendment).

Under Labor Code section 248.5, the Labor Commissioner would be entitled to enforce this article by awarding reinstatement, back pay, and payment of sick days unlawfully withheld, plus the payment of an additional (currently unspecified) sum in the form of an administrative penalty to an employee whose rights were violated. Where paid sick leave is unlawfully withheld, the employee shall recover the greater of $250 or the dollar value of the paid sick days withheld, multiplied by three. To encourage such reporting, the Labor Commissioner would be permitted to keep the reporting employee's identifying information confidential.

The Labor Commissioner or the Attorney General would be able to file a civil action in court against the employer or any person violating this article. The Labor Commissioner or Attorney General would be entitled to appropriate legal and equitable relief, including reinstatement, back pay, the payment of sick days improperly withheld, and liquidated

damages of $50 to each employee for each violation each day, plus reasonable attorneys' fees and costs. (A provision authorizing employees to file civil actions was deleted by recent amendment while another amendment clarifies that these administrative actions would be maintained on "behalf of the aggrieved," suggesting any penalties would ultimately be awarded to the employee.) Another recent amendment which would add subdivision (b) to Labor Code section 245 clarifies that the provisions of this new article "are in addition to and independent of any other rights, remedies or procedures under any other law.

New Labor Code section 247 would also require the employer to provide employees written notice of these paid sick leave rights in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean, as well as any other language spoken by at least 5 percent of its employees. An employer will also be required to display a poster in a conspicuous place notifying employees of these paid sick leave rights. The Labor Commissioner will be responsible for preparing this written notice and the required poster. Employers who willfully violate the notice and posting requirements will be subject to a civil penalty of not more than $100 per offense.

New Labor Code section 247.5 would also require employers to retain, for at least five years, records documenting the hours worked, paid sick days accrued, and paid sick days used by each employee. These records may be inspected by the Labor Commissioner or by an employee, and if an employer fails to maintain adequate records, it shall be presumed that the employee is entitled to the maximum number of hours accruable under this new article, unless the employer proves otherwise by clear and convincing evidence.

Lastly, this bill would amend Labor Code section 226 to require employers to include on the itemized wage statements accompanying paychecks, the "paid sick leave accrued and used" during each pay period.

This bill is very similar to bills that failed passage, but this version only requires three days of sick leave per year rather than up to nine days of annual sick leave proposed in earlier versions.

Status: This bill passed the Assembly along a party-line vote, and has also passed the Senate Labor and Industrial Relations, Judiciary and Appropriations Committees. A full-floor vote is expected shortly in the Senate. This bill faces significant opposition, so further amendments seem likely even if it emerges from the suspense file.

Time Off for Emergency Rescue Personnel (AB 2536)

Labor Code section 230.3 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. Section 230.3 presently defines "emergency rescue personnel" to include an officer, employee, or member of a political subdivision of the state, or of a sheriff's department, police department, or a private fire department. This bill would expand this definition of

"emergency rescue personnel" to include an officer, employee, or member of a disaster medical response entity sponsored or requested by the state.

This bill would also require an employee who is a health care provider (as defined by the Business and Professions Code) to notify their employer at the time they become designated as an emergency rescue personnel, and when the employee is notified they will be deployed because of that designation.

Status: This bill unanimously passed the Assembly and the Senate, and is pending in the Assembly for almost-certain concurrence in minor amendments made by the Senate. This bill will likely soon pass the Assembly and be sent to the Governor, where it is likely to be enacted into law.

Revised CFRA Eligibility Definition for Public and Private School Employees (AB 1562)

This bill would amend the California Family Rights Act's (CFRA) definition of an eligible employee, and make several changes specific to public or private school employees. For instance, under amended Government Code section 12945.2, private or public school employees would be eligible for CFRA leave if they worked 1,250 hours in the preceding 12-month period, or completed at least 60 percent of the hours of service that a full-time employee is required to perform during the previous 12-month period. This new alternative definition is intended to reflect the practical reality that many school employees work a school year rather than a traditional calendar year, and would have to work a much higher percentage of hours (i.e., nearly 95 percent) than non-educational employees to otherwise qualify.

While CFRA generally requires that employers reinstate employees at the same or comparable position, there are several narrow exceptions, including in subsection (r), involving salaried employees who are among the highest paid 10 percent of the employees employed within 75 miles of the worksite at which that employee is employed. This bill would amend subsection (r) to specify that it does not apply to public or private school employees.

Lastly, this bill would designate an eligible employee as an "entitled" employee and amends CFRA to replace the word "eligible" with "entitled" wherever it appears.

Status: This bill passed the Assembly largely along a party-line vote and has been pending in the Senate's Appropriation's "suspense file" since June, suggesting this bill has stalled.

FEHA Protections for Unpaid Interns and Volunteers (AB 1443)

This bill amends the Fair Employment and housing Act (FEHA, Government Code section 12940 *et seq.*) in response to several court rulings in other jurisdictions suggesting

interns or volunteers are not employees for purposes of harassment and discrimination laws.

For instance, it would amend Government Code section 12940(c), which presently prohibits discrimination in apprentice training programs, to also preclude discriminating on the basis of any legally protected classification (e.g., race, religion, disability, etc.) in an unpaid internship or another limited duration program to provide unpaid work experience for that person.

It would also amend subsection (j) to prohibit harassment against unpaid interns or volunteers because of a legally protected classification. Lastly, it would extend the existing religious belief accommodation requirements to unpaid interns and volunteer workers.

Status: This bill unanimously passed the Assembly and the Senate, and is pending in the Assembly for almost-certain concurrence in minor amendments made by the Senate. This bill will likely soon pass the Assembly and be sent to the Governor, where it is likely to be enacted into law.

FEHA Prohibition Proposed against Discriminating Against Employees Because of Drivers Licenses Issued to Undocumented Citizens (AB 1660)

In 2013, California enacted AB 60 which authorized the Department of Motor Vehicles to issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law. AB 60 had also amended the California Unruh Act (Civil Code section 51 *et seq.*) to prevent business establishments from discriminating against individuals who hold or present such driver's licenses.

Amongst other things, this bill would amend Vehicle Code section 12801.9 to make it a violation of the Fair Employment and Housing Act for an employer or covered person to discriminate against a person holding or presenting a driver's license issued pursuant to that section. It would also make it a FEHA violation for an employer or covered person to require a person to present a driver's license, unless possessing a driver's license is required by law or is necessary to perform the position's duties.

However, recent amendments clarify that this bill would not affect an employer's rights or obligations to obtain information required under federal law to determine identity and authorization to work. These amendments also provide that actions taken by an employer that are required by the federal Immigration and Nationality Act would not violate this law. (Note: these proposed amendments to FEHA are presently proposed in the Vehicle Code and it remains to be seen if corresponding changes will be proposed to the FEHA itself (Government Code section 12940 *et seq.*).

This bill would also specify that driver's license information obtained by an employer shall be treated as private and confidential; and exempt from disclosure under the

California Public Records Act; and shall not be disclosed to any unauthorized person or used for any purpose other than to establish identity and authorization to drive.

Status: This bill has passed the Assembly, and has passed the Senate's Judiciary Committee and remains pending in the Appropriations Committee. The recent amendments resolving an employer's ability to comply with federal requirements without violating this bill seems to have addressed the opposition's primary concern so the odds of passage have increased.

AB 1825 Training to Include Prevention of "Abusive Conduct" (AB 2053)

In 2004, California enacted AB 1825, which requires employers with more than 50 employees to provide at least two hours of sexual harassment training for supervisors located in California. Under Government Code section 12950.1, employers must provide this training within six months of an employee's assumption of a supervisory position, and once every two years thereafter.

This bill would amend section 12950.1 to require that this training include the prevention of "abusive conduct." Newly proposed subsection (g)(2) would define abusive conduct as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests." It further specifies that such abusive conduct "may include repeated infliction of verbal abuse, such as the use of 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 bill specifies that "a single act shall not constitute abusive conduct, unless especially severe and egregious."

Notably, this bill only would require such "abusive conduct" prevention training within the already required AB 1825 harassment training, and it does not otherwise amend the Fair Employment and Housing Act to prohibit "abusive conduct" unrelated to an already protected criterion.

Status: This bill passed the Assembly, and has also the Senate's Labor and Industrial Relations and Appropriations Committees, and a full floor vote is expected shortly. This bill appears largely unopposed and likely to be sent Governor Brown shortly.

FEHA Settlement Agreements Must be Knowing and Voluntary (SB 1407)

Citing a concern that employers are routinely forcing employees to waive the Fair Employment and Housing Act's (FEHA) protections by signing "inconspicuous" releases or as a condition of receiving compensation already owed, this bill would add Government Code section 12964.5 to invalidate any release of FEHA claims unless the release is knowing and voluntary.

While earlier versions of this bill enumerated various requirements to ensure releases were knowing and voluntary, including requiring that employees have 21 days to review the agreement and seven days to revoke an executed agreement, these requirements were deleted by amendment. Thus, in its current form, this bill simply states releases of FEHA claims must be "knowing and voluntary" without any further specific written requirements for a release. Presumably, the release would need to specifically reference FEHA claims and could not be made in exchange for monies already owed.

Status: This bill passed the Senate and unanimously passed the Assembly's Judiciary Committee, and a full Assembly floor vote is expected on August 12, 2014.

Arbitration Agreements Targeted (AB 2617)

Employers often utilize arbitration agreements regarding employment disputes for various reasons, including to more expeditiously resolve such disputes, to lower the costs of such disputes, and to avoid the potential for runaway jury verdicts. This bill would amend Civil Code sections 51.7, 52, and 52.1 to prohibit businesses from requiring an individual to agree to arbitrate future disputes regarding violations of the Ralph Civil Rights Act or the Bane Civil Rights Act. This bill would apply to any contracts entered into, modified, or extended after January 1, 2015.

Similar bills have previously stalled during the legislative process, and since this bill singles out arbitration agreements in contravention of the Federal Arbitration Act, it will likely be judicially challenged even if enacted.

Status: This bill passed the Assembly and the Senates Judiciary Committee along party-line votes and a full Senate floor vote is expected shortly.

Retaliation Protections for Employees Enrolled in Public Assistance Programs (AB 1792)

Citing the impact poorly-paid employees have on the state budget, this bill would require the Employment Development Department to collaborate with other specified state agencies to compile and publish a list of employers with employees that are enrolled in public assistance programs. This bill would define "employer" to mean an organization "that employ[s] 50 or more beneficiaries in this state." This bill would also add Government Code section 13084 prohibiting employers from: (1) discharging, discriminating, or retaliating against an employee who enrolls in a public assistance program; (2) refusing to hire a beneficiary of a public assistance program; or (3) disclosing to a non-governmental entity that an employee receives or is applying for public benefits.

Status: This bill passed the Assembly and the Senate's Health Committee on party-line votes, and has been placed in the Senate's Appropriations Committee's suspense file.

Farm Labor Contractors to Undergo Sexual Harassment Training (SB 1087)

California presently has detailed laws regulating "farm labor contractors" (FLC) and the procedures for them to obtain the requisite licenses. (*See* Labor Code section 1682 *et seq.*) This bill amends numerous provisions relating to FLC's generally, including several specific provisions to address concerns about wide-spread sexual abuse of female migrant farm workers recently detailed in the documentary "Rape in the Fields."

First, this law would prohibit the Labor Commissioner from issuing a FLC license to any person who, within the preceding three years, has been found by a court or an administrative agency to have committed sexual harassment of an employee. It would also prohibit an FLC license from being issued to any person who, within the preceding three years, employed any supervisory employee he or she knew or should have known had been found by a court or an administrative agency within the preceding three years of his or her employment with the applicant to have sexually harassed an employee. The employer would be deemed not to have knowledge of harassment by any supervisory employee if that supervisory employee executes a Labor Commission form averring that the person has not been found to have committed sexual harassment within the preceding three years. This particular provision shall not take effect until the Labor Commissioner prepares and posts on its website this attestation form.

In addition to denying an FLC license, the Labor Commissioner would also be entitled to revoke, suspend, or refuse to renew an FLC license if either of these criteria is met.

It would also require that the mandatory written examination portion of the licensing process cover laws and regulations concerning workplace sexual harassment, and that the annual mandatory eight hours of educational classes be increased to nine hours and include at least one hour of sexual harassment training.

An applicant for an FLC license would also be required to execute written statements that the Labor Commissioner shall provide, attesting that their employees have been trained in the prevention of sexual harassment. Supervisory employees would need to receive training for two hours each calendar year, while non-supervisory employees would need to be trained at time of hire and every two years. A recent amendment outlines requirements for this sexual harassment training that are very similar to the currently-required AB 1825 training for private employers, including that the FLC maintain records of this harassment training for three years.

Secondly, this bill seeks to increase the ability of the Division of Labor Standards Enforcement (DLSE) to enforce applicable laws. Accordingly, this bill proposes increased funding for FLC enforcement and verification, and aims to increase bonding requirements, increase wage and hour reporting, and increase penalties for violations.

Status: This bill passed the Senate, and the Assembly's Labor and Employment and Appropriations Committees, and a full Assembly floor vote is expected shortly.

Legislature Approves Waiting Time Penalties for Final Wage Violations for Unionized Theatrical Employees (AB 2743)

While Labor Code section 201 sets forth the general rule regarding the payment of final wages, the Labor Code also enumerates alternative final pay rules for particular industries due to the unique nature of those industries. Labor Code section 203, which authorizes waiting time penalties for failure to comply with these final pay rules, generally cross-references both section 201 and these more specific final pay statutes. However, and likely due to a legislative drafting error, Labor Code section 203 does not presently cross-reference section 201.9, which governs final pay for employees at live theatrical and concert events that are subject to a collective bargaining agreement. This bill would amend section 203 to include section 201.9 as one of the specific final pay statutes to which waiting time penalties apply if final wages are not paid in accordance with the applicable Labor Code section.

Status: This bill has passed the Assembly and the Senate, and has been sent to Governor Brown for signature or veto.

Legislature Approves Longer Statute of Limitations for Recovering Liquidated Damages for Unpaid Wages (AB 2074)

California law permits an employee to pursue a civil action to recover unpaid wages or compensation, and Labor Code section 1194.2 permits a successful employee to also recover liquidated damages equal to the unpaid wages plus interest in civil actions regarding minimum wage violations. Responding to recent cases suggesting that actions for recovery of penalties must be filed only within one year, whereas actions to recover unpaid wages have a three-year statute of limitations, this bill would amend section 1194.2 to specify that the statute of limitations to pursue liquidated damages is the same as in an action for wages from which the liquidated damages arise.

Status: This bill has passed the Assembly and the Senate, and has been sent to Governor Brown for signature or veto.

Penalties for Minimum Wage Violations to Include Waiting Time Penalties (AB 1723)

Labor Code section 1197.1 presently enumerates various statutory penalties against employers who fail to pay the legally-required minimum wage. Specifically, it authorizes employees to recover a civil penalty (as specified), restitution of wages, and liquidated damages. While the Labor Code presently provides three mechanisms to pursue such violations (e.g., through a "Berman Hearing" before the Labor Commissioner, through a civil action, or through a Labor Commissioner citation), section 1197.1 presently authorizes waiting time penalties under section 203 only for the first two mechanisms (i.e., not for Labor Commissioner citations). This bill would amend section 1197.1 to harmonize these three recovery mechanisms and authorize waiting time penalties in all

three scenarios if an employer failed to timely pay wages of a resigned or discharged employee.

Status: This bill passed the Assembly, as well as the Senate's Labor and Industrial Relations and Appropriations Committees, and a full Senate floor vote is expected shortly.

Employee Liens against Employer Property (AB 2416)

California law presently permits specified classes of laborers who contribute labor, skill, or services to a work of improvement, the right to record a mechanic's lien upon the property improved by their efforts. California law also generally authorizes employees to file claims against their employers through the Division of Labor Standards Enforcement for unpaid wages, although it does not authorize such employees to obtain a lien (akin to a mechanic's lien) for such wages owed.

Known as the California Wage Theft Recovery Act, this bill would enact a new and very detailed chapter in the Labor Code (section 3000 *et seq.*), authorizing non-exempt employees to record and enforce a wage lien upon real and personal property of an employer or a property owner (as specified) for unpaid wages, other compensation, and related penalties owed the employee. This bill would also prescribe very detailed requirements relating to the obtaining, recording and enforcement of the wage lien.

This bill faces significant opposition and has undergone and continues to undergo amendment. Recent amendments have outlined procedures (in proposed new Labor Code section 3005.5) for the employer or property owner to release the notice of lien if the employer makes certain specified contentions (e.g., that the wages have been paid, etc.) and would require a certain notification to be made under penalty of perjury. A proposed amendment to section 3001(d) would prohibit a lien from attaching if the employer receives a court or Labor Commissioner order that the employee does not have a reasonable likelihood of success on the wage claims. Other amendments clarify that the lien cannot be filed against the primary residence of an individual employer and authorize the employer to recover reasonable attorneys' fees and a penalty up to $1,000 in bad faith actions. Another amendment would clarify that an employee cannot record a lien based upon a claim permanently extinguished by an employee's failure to timely file a claim.

Proponents argue this bill closely tracks a similar successful wage lien statute in Wisconsin and simply ensures employees have an effective mechanism to collect future wage judgments. Opponents argue that, as drafted, the bill's provision for a lien would potentially freeze assets prior to a judgment even being awarded, and would create third-party market disruptions since other individuals or commercial entities may have liens. To test the efficacy or negative impacts of this bill, it would require the Department of Industrial Relations to issue a report to the legislature by January 1, 2019, concerning its effects.

This bill is similar to prior versions that have stalled in the legislative process.

Status: This bill faces considerable opposition, but has passed the Assembly, and passed key votes in the Senate's Judiciary, Labor and Industrial Relations, and Appropriations Committees on party-line votes. A Senate floor vote is expected shortly, but its ultimate prospects are not clear given the amount of opposition and the complicated nature of this bill.

Prohibition against Employers Advertising that "Unemployed Need Not Apply" (AB 2271)

This bill responds to concerns about discrimination against the unemployed by limiting an employer's ability to screen applicants based on "employment status," which is defined as an "individual's present unemployment, regardless of length of time that the individual has been unemployed." Specifically, this bill would prohibit an employer, unless based upon a bona fide occupational qualification, from: (1) publishing advertisements suggesting an individual's current employment is a job requirement; or (2) affirmatively asking an applicant to disclose orally or in writing his or her current employment status until the employer has determined that the applicant meets the minimum employment qualifications for the position, as stated in the published notice for the job. The law would impose fairly similar prohibitions upon employment agencies or persons who operate Internet websites for posting positions in California.

The proposed bill would not prohibit employers or employment agencies from publishing job advertisements setting forth the lawful qualifications for the job, including but not limited to the holding of a current and valid professional or occupational license. It also would not prohibit advertisements for job vacancies stating that only applicants who are currently employed by that employer will be considered (so-called "internal" hiring).

In addition, the bill would not prohibit employers, employment agencies, or website operators from: (1) obtaining information regarding an individual's employment, including recent relevant experience; (2) from having knowledge of a person's "employment status;" or from inquiring about the reasons for an individual's unemployment; or (3) from refusing to offer employment to a person because of the reasons underlying an individual's employment status. In other words, this bill seems to allow employers to consider the reasons for an individual's unemployment but prohibits them from initially screening out applicants simply because they are unemployed.

This bill would authorize civil penalties of $1,000 for the first violation, $5,000 for the second violation, and $10,000 for each subsequent violation, enforceable by the Labor Commissioner.

This bill appears very similar to AB 1450, which Governor Brown vetoed in 2012.

Status: This bill passed the Assembly, and the Senate's Labor and Industrial Relations Committee, but was recently placed on the Senate Appropriations Committee's suspense file.

New Foreign Labor Contractor Requirements Proposed to Combat Human Trafficking (SB 477)

To address human trafficking concerns, this bill would expand and strengthen the regulations of "foreign labor contractors" who recruit foreign workers to relocate to California. Notably, "foreign labor contracting activity" would be specifically defined as "recruiting or soliciting for compensation a foreign worker who resides outside of the United States in furtherance of that worker's employment in California, including when that activity occurs wholly outside the United States." Also of note, in response to employer-provided concerns that led to the vetoing of a similar bill last year (SB 516), this definition states "'[f]oreign labor contracting activity' would not include the services of an employer, or employee of an employer, if those services are provided directly to foreign workers solely to find workers for the employer's own use.'" However, in exchange for this general exemption for direct recruiting activities, California employers who use foreign labor contractors would be prohibited from using contractors not registered with the Labor Commissioner. They would also be required to disclose which employees are working with the contractor, and would be required to consent to California's jurisdiction in the event of a future suit.

"Foreign labor contractors" covered by this bill would be required to register with the Labor Commissioner by July 1, 2016, and pay a registration fee set by the Department of Industrial Relations to support the ongoing costs of the program. These contractors would also be required to post a surety bond between $25,000 and $150,000 before the Labor Commissioner can renew or register a foreign labor contractor. Such contractors would also be required to disclose specified information to foreign workers, in a language they can comprehend, regarding the terms and conditions of the proposed work in California. This bill would also authorize civil penalties of $1,000 to $25,000 for violations of these provisions, and allow an aggrieved person or the Labor Commissioner to seek injunctive relief.

This bill is very similar to SB 516 which Governor Brown vetoed, seemingly in large part because the fees generated would be insufficient to cover the program's costs.

Status: This bill unanimously passed the Senate, and recently unanimously passed the Assembly' Labor and Employment and Judiciary Committees, but is now on the Assembly's Appropriations Committee's suspense file. This bill does not appear to face significant opposition, and a similar bill passed the Legislature in 2013, but it is uncertain if Governor Brown will sign this year's version if it again makes it to his desk.

Cal-WARN Notice Requirements (AB 1543)

California's version of the Worker Adjustment and Retraining Notification Act (Cal-WARN, Labor Code section 1401 *et seq.*) prohibits employers from ordering a mass layoff, relocation, or termination (as defined) without first providing 60 days written notice to affected employees and certain government agencies and officials. Specifically,

Labor Code section 1401 presently requires these advance notices be provided to the Employment Development Department (EDD), the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.

This bill would amend Labor Code section 1401 to require the EDD to forward a copy of this notice to the Governor's Office of Business and Economic Development. It would also require the EDD and the Governor's Office of Business and Economic Development to post the notice on their respective websites. This requirement is intended to assist the Governor regarding economic strategy and to help improve job creation and retention.

Status: Although this bill unanimously passed the Assembly, as well as an initial Senate committee vote, it has been placed in the Senate's Appropriations Committee's inactive file and may be dead for this year.

Unemployment Insurance Eligibility for Training Periods (AB 1556)

While California's Unemployment Insurance Code presently prohibits an unemployed individual from being disqualified for benefits solely because he or she is a student, it previously contained no similar protection for individuals who commence a training or education program. This bill addresses this omission by adding new section 1253.92 to the Unemployment Insurance Code to preclude unemployed individuals who are meeting specified requirements and applying for continued unemployment compensation from being scheduled for an eligibility determination for a week in which they commenced or are participating in a training or education program under specified conditions.

While Unemployment Insurance Code section 316 presently requires that standard information employee pamphlets be printed in English and Spanish, this bill would instead require these pamphlets to be printed in English and the seven other most commonly used languages amongst participants in unemployment and disability insurance programs. It would also require the EDD to ensure its website provides information about unemployment insurance benefits in the seven languages, other than English, most commonly used by unemployment insurance applicants and claimants.

Status: This bill passed the Assembly and the Senate's Labor and Industrial Relations Committee, and a full floor vote is expected on August 12, 2014.

Expanded Deadlines to Appeal Employment Development Department Determinations (SB 1314)

This bill would amend multiple Unemployment Insurance Code sections to extend, beginning July 1, 2015, the deadline from 20 days to 30 days to appeal or seek reconsideration of various determinations by the Employment Development Department (EDD). For instance, it would amend section 1328 to extend the deadline to challenge an EDD determination regarding the eligibility for UEI benefits to 30 days. This bill would also amend Unemployment Insurance Code section 1334 to extend the period before an

administrative law judge determination is final from 20 to 30 days, unless a further appeal is initiated to the California Unemployment Insurance Appeals Board.

Status: This bill unanimously passed the Senate and the Assembly's Insurance Committee and is now pending in the Assembly's Appropriations Committee.

"Client Employers" to Share Certain Legal Responsibilities with Labor Contractors (AB 1897)

Labor Code section 2810 presently prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors (e.g., 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 funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws. This bill would enact a new section, Labor Code section 2810.3, requiring a "client employer" to share with the labor contractor legal responsibility and liability for certain obligations.

Specifically, client employers would share with the labor contractor all civil legal responsibility and civil liability for: (1) the payment of wages to workers provided by a labor contractor; (2) the obligation to provide a safe work environment required under Labor Code section 6300; and (3) the failure to secure valid workers compensation coverage. (Recent amendments deleted language that client employers would also have shared responsibility for reporting wage-related reporting requirements or tax withholdings). Despite this shared responsibility, a worker or their representative could not file a claim against the client employer until after providing thirty days notice of violations of any shared obligations.

For purposes of this bill, "client employer" would be defined as a business entity, regardless of form, that obtains or is provided workers to perform labor or services within the usual course of business from the labor contractor. "Client employer" does not included business entities with a workforce of less than 25 workers, including those hired directly by the client employer and those obtained from or provided by, any labor contractor, and five or fewer workers supplied by a labor contractor at any given time. It also would not include state or any political subdivision of the state, and "labor contractor" would not include certain non-profits, labor organizations or motion picture payroll services companies. However, "worker" would apply only to non-exempt employees. "Usual course of business" is defined as the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.

This bill would also require a client employer or labor contractor to provide to a requesting enforcement agency or department, and make available for copying, information within its possession, custody or control required to verify compliance with state laws. Recent amendments clarify this would not require the disclosure of any information that is not otherwise required to be disclosed by employers upon request by a state enforcement agency or department.

This bill would prohibit client employers from attempting to contract around these provisions, such as by shifting these responsibilities solely to the labor contractor, but the employer and labor contractor would be able to contract regarding certain remedies, including indemnification for the other party's violations of this section.

Lastly, recent amendments clarify this section will not impose individual liability on a homeowner for labor or services performed at the home, nor shall it impose liability on an employer for the use of a bona fide independent contractor.

Status: This bill passed the Assembly on a party-line vote, and also passed several Senate committee votes on party-line votes. A full-floor vote is expected shortly in the Senate.

Changes in Abatement Period Pending Appeal for Serious Violations (AB 1634)

Presently, the Division of Occupational Safety and Health (DOSH) may issue a citation or notice of proposed penalty to an employer it determines to be in violation of safety-related laws, and this citation shall identify a period to abate (i.e., to fix) the alleged violation. The employer may appeal the citation to the Occupational Safety and Health Appeals Board, and there is presently no requirement to fix the violation while the appeal is pending.

This bill would amend Labor Code section 6600 to specify that employer appeals related to serious violations, a repeat serious violation, or a willful serious violation would generally not stay the abatement period identified in a citation. However, it would also authorize the DOSH, if requested, to stay the abatement period pending an appeal if it determines the stay will not adversely affect the health and safety of employees.

The bill's proponents argue these amendments will ensure serious safety remedies are not delayed pending a potentially lengthy appeal, while opponents argue it basically forces employers to remedy an alleged violation even though the issue has not yet been fully adjudicated.

This bill is similar, but not identical, to AB 1165, which Governor Brown vetoed in 2013. It also appears modeled upon a bill enacted in Washington State in 2011.

Status: This bill passed the Assembly on a party-line vote, and passed the Senate's Labor and Industrial Relations Committee, but has been placed on the Senate Appropriations Committee's suspense file.

"Emergency" Legislation Proposed Concerning Prevailing Wage Determinations (SB 266)

Originally introduced in 2013, this bill is intended to address concerns that the lengthy delays in determining whether a project is a public work for prevailing wage purposes

potentially negatively impacts workers' abilities to pursue wage-related claims through the Labor Commissioner. Accordingly, this bill would amend Labor Code section 1741.1 to require the body awarding the public work contract to furnish, within 10 days after receipt of a written request from the Labor Commissioner, a copy of the valid notice of completion for the public work, or a document evidencing the awarding body's acceptance of the public work on a particular date, whichever occurs later.

The bill would also require the awarding body to notify the appropriate office of the Labor Commissioner if, at the time of receipt of the Labor Commissioner's written request, there has been no valid notice of completion filed by the awarding body in the office of the county recorder and no document evidencing the awarding body's acceptance of the public work on a particular date. If the awarding body fails to timely furnish the Labor Commissioner with the applicable documents, the bill would require that the period for service of assessments be tolled until the Labor Commissioner's receipt of the applicable document.

A recent amendment states this bill is "urgency" legislation and, if enacted, would be immediately effective.

Status: This bill overwhelmingly passed the Senate and has passed the Assembly's Labor and Employment and Appropriations Committees, and a full floor vote is expected shortly.

Workplace Violence Prevention Plans for Hospitals (SB 1299)

"The California Occupational Safety and Health Act of 1973 impose safety responsibilities on employers and employees, including the requirement that an employer establish and maintain an effective injury prevention program." This bill would enact Labor Code section 6401.8 requiring the Occupational Safety and Health Standards Board, by July 1, 2016, to enact standards obligating specified types of hospitals (e.g., acute care, acute psychiatric) to adopt a workplace violence prevention plan as part of the hospital's injury and illness prevention plan. A recent amendment specifies that certain state-operated hospitals would be exempt from these requirements.

Status: This bill passed the Senate, and has passed the Assembly's Health Committee and been referred to the Assembly's Appropriations Committee.