



CALIFORNIA LEGISLATIVE DEVELOPMENTS

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LEGISLATIVE RECAP

As expected, there was a flurry of activity as the May 30th deadline for bills to pass their house of origin approached. And also as expected, a number of employment-related bills passed either the Assembly or the Senate and have now proceeded to the second legislative chamber. Some of the more significant employment bills that have passed this first legislative hurdle include:

- AB 1522 which would require all employers provide up to three days of paid sick leave annually;
- AB 1443 which would amend FEHA to prohibit discrimination or harassment against unpaid interns or volunteers;
- AB 2053 which would require employers discuss “abusive conduct” in sexual harassment training currently required under AB 1825;
- SB 1407 and AB 2617 which would impose new requirements for FEHA-related settlement agreements and essentially prohibit arbitration agreements for employment claims, respectively;
- SB 935 which would raise California’s minimum wage beyond the just-enacted raises in AB 10, to \$13.00 hourly by 2017;
- AB 2416 which would allow employees to file liens against an employer’s real or personal property in wage disputes; and
- AB 2271 which would preclude employers from advertising in a manner suggesting that unemployed applicants need not apply; and

Looking ahead, the Legislature will soon begin holding initial Committee hearings on these bills before taking its summer recess, with a second flurry of activity anticipated before the August 31, 2014 deadline for bills to pass both legislative chambers.

Listed below, largely by subject matter, are the bills that may affect private sector employers we are currently tracking.

BILLS THAT PASSED THE FIRST LEGISLATIVE CHAMBER

Amended Paid Sick Leave Bill Moves Forward (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 seven 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.

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 (1) a 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 at least the same rate, 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 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 was 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. (A provision that would have authorized employees to file civil actions was deleted by recent amendment). 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.

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 (which the Labor Commissioner will create) in a conspicuous place notifying employees of these paid sick leave rights. 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 have repeatedly been introduced but stalled, although this version is less far-reaching as it only requires three days of sick leave per year rather than up to nine days of annual sick leave.

Status: This bill passed the Assembly along a party-line vote and is presently pending in the Senate and will likely be assigned to the Labor and Industrial Relations Committee.

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.

Status: This bill unanimously passed the Assembly and is pending in the Senate’s Labor and Industrial Relations Committee where passage seems likely.

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.

Status: This bill passed the Assembly largely along a party-line vote and is pending in the Senate but has not yet been assigned to a committee.

FEHA Protections for Unpaid Interns and Volunteers (AB 1443)

This bill 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 any other program to provide unpaid experience for that person in the workplace or industry. It would also amend subsection (j) to prohibit harassment against unpaid interns or volunteers because of a legally protected classification. This bill is in response to several court rulings in other jurisdictions suggesting interns or volunteers are not employees for purposes of harassment and discrimination laws.

Status: This bill unanimously passed the Assembly and is pending in the Senate's Judiciary Committee where passage seems likely.

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 is scheduled for a hearing in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

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. However, while earlier versions of this bill enumerated various requirements to ensure releases were knowing and voluntary, including requiring 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.

Status: This bill passed the Senate and is pending in the Assembly’s Judiciary Committee but no hearing has yet been scheduled.

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 rather than litigating them. 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 along a party-line vote, and is pending in the Senate but has not yet been assigned to a committee.

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] 25 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 on a party-line vote and is pending in the Senate but has not yet been assigned to a committee.

Amendments to “Immigration-Related” Retaliation Protections (AB 2751)

This “clean up” bill makes relatively-minor changes to several recently-enacted measures. 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 would amend 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. This bill would clarify that the licenses to be affected would be “specific to the business location or locations where the unfair immigration-related practice occurred.”

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 bill would further amend AB 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.” This section would 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.”

Lastly, this bill would amend Labor Code section 98.6 to specify that the \$10,000 penalty for violating this section shall be awarded to the “employee or employees who suffer the violation.”

Status: This bill passed the Assembly and is scheduled for a hearing on June 10, 2014 in the Senate’s Judiciary Committee.

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 wide-ranging bill would attempt to address several concerns in the agricultural industry.

First, this bill would attempt to reduce the reported prevalence of inappropriate sexual conduct towards agricultural employees. Thus, 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.

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 part 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 ten hours and include at least two hours of sexual harassment training. An applicant for an FLC license would also be required to execute a written statement attesting that their supervisory employees have been trained in the prevention of sexual harassment.

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 but has not yet been assigned to an Assembly Committee.

Additional Minimum Wage Increases Proposed (SB 935)

In 2013, the Legislature passed and Governor Brown approved AB 10, increasing California's hourly minimum wage to \$9.00 on July 1, 2014, and to \$10.00 on January 1, 2016. This bill would again increase California's minimum wage in three separate increments over the next three years. Specifically, it would increase California's hourly minimum wage to \$11.00 by January 1, 2015, to \$12.00 by January 1, 2016, and to \$13.00 by January 1, 2017. After January 1, 2018, the minimum wage would also be annually adjusted based on the California Consumer Price Index (CPI). Notably, while the rate could be adjusted upwards, it could not be adjusted downwards, even if the CPI was negative for the preceding year.

These minimum wage increases would apply to all industries, including private and public employment.

Status: This bill passed the Senate on a party-line vote and is pending in the Assembly but has not yet been assigned to a committee.

Senate Passes Bill Clarifying that 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 such 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.) This bill would amend section 226.7 to specify that any rest or recovery period 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. This bill further provides that this amendment would be declarative of existing law, thus applying retroactively.

Status: This bill passed the Senate by a fairly wide margin, and is scheduled to be heard in the Assembly's Labor and Employment Committee on June 11, 2014.

Waiting Time Penalties Proposed for Final Wage Violations under CBA (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 passed the Assembly and is scheduled to be heard in the in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

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 passed the Assembly and is scheduled to be heard in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

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 but has not yet been assigned to a Senate Committee.

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 Prevention Act, this bill would enact a new Chapter in the Labor Code (section 3000 *et seq.*) authorizing an employee 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 requirements relating to the recording and enforcement of the wage lien. In response to considerable opposition, 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. Proponents argue this bill simply ensures employees have an effective mechanism to collect future wage judgments, but opponents argue that, as drafted, the bill’s provision for a lien would potentially freeze assets prior to a judgment even being awarded.

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

Status: Despite considerable opposition, this bill passed the Assembly on a party-line vote, but has not yet been assigned to a Senate Committee.

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

This bill would limit 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 (a)

publishing advertisements suggesting an individual's current employment is a job requirement; or (b) 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 obtaining information regarding an individual's employment, including recent relevant experience, or from having knowledge of a person's "employment status," or from inquiring about the reasons for an individual's unemployment, or 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 prohibit 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 but has not yet been assigned to a Senate Committee.

Senate Unanimously Passes Bill Regulating Foreign Labor Contractors (SB 477)

To address human trafficking concerns, the California Senate recently unanimously passed this bill to expand and strengthen the regulations of "foreign labor contractors" who recruit foreign workers to relocate to California. Notably, "foreign labor contracting activity" is 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' does 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, would 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 \$75,000 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.

Status: This bill has unanimously passed the Senate and is scheduled to be heard in the Assembly's Labor and Employment Committee on June 11, 2014.

Assembly Unanimously Passes Amendments Regarding Cal-WARN Notices (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: This bill unanimously passed the Assembly and will be heard in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

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 320.3 to the Unemployment Insurance Code to preclude unemployed individuals from being deemed ineligible for a week in which they commenced a training or education program under specified conditions. Specifically, the individual will need to have notified the

Employment Development Department (EDD), who would be permitted to investigate this program, and to have made certain certifications on the continued claim form (e.g., he or she was able and willing to work at the same time he or she commenced the training program).

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 will be heard in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

Additional Grounds for Disqualification for Unemployment Insurance Benefits (AB 2362)

Unemployment Insurance Code section 2362 presently provides for the forfeiture of, and ineligibility for, unemployment insurance benefits for certain time periods for individuals convicted of willfully making a false statement or omitting material facts to obtain or increase any unemployment insurance benefit or payment. This bill would expand section 2362 to similarly disqualify individuals convicted "under specified forgery, grand theft, and false claims provisions in state law or a federal mail fraud provision for those acts or omissions." It would also require a California court to report convictions of those state laws to the EDD.

Status: This bill unanimously passed the Assembly and is scheduled to be heard in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

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

This bill would amend multiple Unemployment Insurance Code sections to extend 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 is pending in the Assembly's Insurance Committee but no hearing has been scheduled.

“Client Employers” to Share Legal Responsibility 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 legal responsibility and liability for the payment of wages, as well as any failure to report and pay all required employer contributions, and any failure to obtain valid workers’ compensation coverage.

For purposes of this bill, “client employer” would be defined as a business entity with a workforce of more than 25 workers that obtains or is provided workers to perform labor or services within the usual course of business of the individual or entity from a labor contractor. “Client employer” would not include the 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 but has not been assigned to a Senate Committee.

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 bill would slightly amend 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.

Status: This bill unanimously passed the Assembly and will be heard in the Senate's Labor and Industrial Relations Committee on June 11, 2014.

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, but has not yet been assigned to a Senate Committee.

"Child Labor Protection Act" Proposed (AB 2288)

Known as the Child Labor Protection Act of 2014, this bill would enact a new Labor Code provision (section 1311.5) to provide additional remedies for violations of California's laws regarding employment of minors. For instance, it would provide that 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 would apply retroactively.

The bill would also authorize 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 bill would impose a civil penalty of \$25,000 to \$50,000 for each violation involving minors less than 12 years of age.

Status: This bill unanimously passed the Assembly and will be heard by the Senate’s Judiciary Committee on June 10, 2014.

Prevailing Wage Determinations (SB 266)

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.

Status: This bill overwhelmingly passed the Senate and will be heard in the Assembly’s Labor and Employment Committee on June 25, 2014.

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, 2015, 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 but has not yet been assigned to an Assembly Committee.

BILLS THAT FAILED PASSAGE

A number of bills either were voted down or simply failed to move forward suggesting they are dead for this year, although some potentially may resurface in the future. These bills include:

Individual Alternative Workweek Schedules Dies in Committee (AB 2448)

While California authorizes so-called “alternative workweek schedules,” whereby non-exempt employees can work up to ten hours daily without receiving overtime (*see* Labor Code section 510), as a practical matter, it is often difficult to obtain the requisite two-thirds work unit approval for such schedules. Known as the Workplace Flexibility Act of 2014, this bill would have enacted Labor Code section 511.5 to permit an individual non-exempt employee to request an “employee-selected flexible work schedule,” providing for workdays up to ten hours within the forty-hour workweek, and would have allowed employers to implement this schedule without the obligation to pay overtime compensation for the ninth and tenth hours in a workday.

In short, this bill would have allowed individual employees to request such schedules without requiring the employers to follow the complicated “work unit approval” pursuant to section 510. In this regard, the bill would essentially have utilized a procedure similar to that used in two other states requiring daily overtime (Alaska and Nevada).

Although this bill appears to be gaining support, this year’s version died on a party-line vote in the Assembly’s Labor and Employment Committee.

Paid Time Off for School or Day Care Visits (AB 2030)

Labor Code section 230.8 presently requires employers with more than 25 employees at the same location to provide up to 40 hours annually (and up to eight hours in a single month) for specified employees (i.e., parent, guardian, or grandparents with custody) to participate in the child’s school or day care activities. Section 230.8 also presently requires an employee to utilize existing vacation, personal leave, or compensatory time off for purposes of such a planned absence, and also authorizes an employee to utilize time off without pay for this purpose, to the extent the employer makes such time off available.

This bill would have amended this section by requiring employers to provide such time off without loss of pay. In this regard, it would have prohibited employers from requiring employees to use existing vacation, personal leave, or compensatory time off for these purposes (unless otherwise provided for by a collective bargaining agreement entered

into before January 1, 2015), or from being required to use time off without pay for those purposes.

“Familial Status” Protections for FEHA (SB 404)

Originally introduced in 2013, this bill would have included “familial status” to the list of protected categories under the Fair Employment and Housing Act (FEHA) for which the right to seek, obtain, and hold employment cannot be denied. If enacted, “familial status” would have been defined as “an individual who provides medical or supervisory care to a family member.” “Family member” would also have been broadly defined to include a child, parent, spouse, domestic partner, or parent-in-law, as defined in specified statutes.

This holdover bill from the 2013 session failed to move forward suggesting it is dead for 2014.

Partial Affirmative Defense for Relying Upon DLSE Guidance (AB 2688)

The Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations (DIR) is generally charged with enforcing employment statutes and regulations in either administrative actions or through litigation. An employer who violates employment statutes or regulations may face administrative sanctions, civil fines, civil penalties, and criminal penalties. Some common employer laments are that many of California’s Labor Code provisions are not clearly drafted, and the controlling interpretation of these regulations may change from administration to administration.

Responding to several of these concerns, this would have, until 2019, provided a partial affirmative defense to employers who in good faith relied upon a DLSE opinion letter if they acted in good faith when the violation occurred. An employer satisfying these elements would have been immune from certain civil and criminal penalties and costs, but would still have had to make restitution for lost wages to affected employees.

Increased Penalties for Delayed Workers’ Compensation Penalties (AB 2604)

California’s Workers’ Compensation laws presently provide that when required payment of an award has been “unreasonably delayed or refused,” the Workers’ Compensation Appeals Board may order this award to be increased up to 25 percent or \$10,000, whichever is less. This bill would have amended Labor Code section 5814 to provide that the Appeals Board may, in such circumstances, order that the award be increased up to the greater (rather than the lesser) of 25 percent or \$10,000.

This heavily-opposed bill stalled in the Assembly’s Judiciary Committee.

Employer Recovery of Attorneys’ Fees and Costs in Wage Statement Litigation (AB 2095)

Labor Code section 226 requires employers to provide itemized wage statements containing statutorily enumerated information, and, if an employer fails to do so, authorizes employees to file civil actions and to recover damages or penalties, as well as attorneys' fees and costs. Responding to concerns employees are filing class actions based upon purely technical discrepancies in an employer's name, this bill would have amended section 226(h) to allow prevailing employers to recover their reasonable attorneys' fees and costs if the court determines the action was brought in bad faith.

While this bill passed the Assembly's Labor and Employment Committee, it failed passage in the Judiciary Committee.

Cure Period for Wage Statement Violations under PAGA (AB 2079)

California's Labor Code Private Attorneys General Act of 2004 (PAGA, codified at Labor Code section 2699 *et seq.*) authorizes aggrieved employees to file civil actions seeking the recovery of a civil penalty for Labor Code violations. PAGA also provides that for certain enumerated Labor Code provisions, the employer is entitled to a right to cure the violation before an action may be brought by an employee. This bill would have amended PAGA (specifically Labor Code section 2699.5) to allow an employer to cure a violation of the wage statement law (Labor Code section 226(a)) before a PAGA action could be brought. This bill was intended to address situations where employees were filing PAGA representative actions for very minor deviations in the employer's name on a wage statement that did not confuse the employee.

This bill failed passage on a party-line vote in the Assembly's Labor and Employment Committee.

Additional Penalties for Employers who Frustrate Labor Commissioner Proceedings (SB 919)

This bill proposed certain procedural changes regarding Labor Commissioner investigations to dissuade employers from potentially not cooperating. For instance, whereas Labor Code section 98(a)(3) previously required employers who were aware of a Labor Commissioner claim to notify the Commissioner of any address change within ten days, this bill would have required employers who fail to do so to pay treble the costs incurred by the party attempting to serve the employer at the new address. Secondly, while section 98(f) had previously precluded a default from being entered against an employer, this bill would have provided the Labor Commissioner the discretion to enter a default against an employer who has willfully evaded service of process if certain enumerated factors are present.

Bill Regarding Disclosure of Criminal Convictions to Public Employers Fails Passage (AB 2535)

In 2013, California enacted a new provision (Labor Code section 432.9) to take effect on July 1, 2014, limiting a public employer's ability to inquire about criminal convictions

until after it determines an applicant meets the minimum employment qualifications for the position. This bill would have further amended section 432.9 to require a public entity, after determining the applicant meets the minimum employment requirements, to have the applicant make a written disclosure as to whether the applicant has been convicted of a misdemeanor or a felony. In other words, rather than simply allowing the public employer to request such information, this bill would compel the public employer to do so.

This bill unanimously failed passage in the Assembly's Judiciary Committee.

Annual Reviews by Employment Development Department to Prevent Identity Theft (AB 1663)

This bill would have required the Employment Development Department (EDD) to annually review the information in its unemployment insurance base wage file to identify instances in which multiple names are associated with a single social security number. Under proposed new section 322.5 to the Unemployment Insurance Code, whenever the EDD discovers 10 or more names associated with a single social security number, it would have been required to notify the Department of Justice about this incidence of potential identity theft.

This bill failed passage in the Assembly's Insurance Committee.

Changed Rules Concerning "Tips" for Employment Tax Purposes (AB 2080)

California and federal law require employers to make specified payments and withholdings from wages paid for employment to the EDD, and employers must also file reports of wages with the EDD. This bill would have, for taxable years beginning on or after January 1, 2015, excluded tips (as defined) from gross income for the purposes of the Personal Income Tax Law. It would also have excluded tips from the definition of wages paid for employment for the purposes of income tax withholding, unemployment insurance, and the employment training tax.

Wage and Penalty Assessments for Prevailing Wage Violations (AB 1741)

California has enacted prevailing wage laws for certain industries and contracts, and the Labor Commissioner is empowered to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if the Labor Commissioner determines they have violated these laws regulating public work contracts or prevailing wage laws. Labor Code section 1742.1 presently requires these contractors or subcontractors to deposit the full amount of the assessment or notice to the Department of Industrial Relations (DIR) within 60 days, or face liquidated damages. This bill would have amended section

1742.1 to specify that a contractor, subcontractor, or surety may deposit this assessment with the DIR in the form of cash or a bond.