California Legislative Developments

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LEGISLATIVE SUMMARY

With the expiration of the September 30th deadline for Governor Jerry Brown to sign or veto bills, California's 2016 legislative session drew to a close. Although the overall number of new employment laws appears down slightly compared to recent years, there were still a number of new laws enacted in 2016 for employers to consider, including laws that will:

- Increase California's minimum wage to $10.50 in January 2017 and to $15.00 by 2022 (SB 3);
- Expand California's Equal Pay Act to target race and ethnicity-related wage differentials (SB 1063);
- Amend California's Equal Pay Act to preclude prior salary history from justifying gender-related wage differentials (AB 1676);
- Prohibit hiring-related inquiries concerning juvenile arrests (AB 1843);
- Expand the prohibitions regarding unlawful "immigration-related practices" (SB 1001);
- Require employers to provide written information regarding the employee's sexual assault/domestic violence leave rights (AB 2337);
- Preclude employment contract provisions requiring California employees agree to non-California venues and non-California law for future disputes (SB 1241);
- Phase-out the overtime exemptions for agricultural workers (AB 1066);
- Amend the wage statement requirements to remove the duty to track hours worked for many exempt employees;
- Expand California's heat illness regulations to include indoor employees (SB 1167); and
- Require employers without private retirement plans to develop programs to enable employees to participate in California's new state-sponsored retirement program (SB 1234).

Amongst the bills that failed passage this year but may resurface in 2017 were those that would require smaller employers to provide "parental leave" and would require employers to post work schedules by certain deadlines.

Things were also active at the municipal level with many cities enacting either or both their own minimum wage increase and paid sick leave laws. This trend will likely also continue in 2017, and other cities may attempt to emulate San Francisco's laws regarding so-called "predictive scheduling" or providing paid family leave.

Discussed below are the new state laws enacted in 2016 with general application to private employers, followed by both an overview of the more significant municipal-level developments, as well as a discussion of the Department of Labor's recently passed sick leave regulations regarding federal contractors. Unless otherwise indicated, these new laws generally take effect January 1, 2017.

NEW LAWS STATE LAWS ENACTED OR EFFECTIVE IN 2016

California's Minimum Wage to Increase to $15.00 by 2022 (SB 3)

In June 2016, the California Legislature quickly introduced and passed this law increasing the state-wide minimum wage to $15.00 an hour by 2022. For employers with more than 25 employees, the minimum wage will increase according to the following schedule:

Increase Date	New Rate	New Salary Threshold for Overtime Exemption
January 1, 2017	$10.50	$43,680
January 1, 2018	$11.00	$45,760
January 1, 2019	$12.00	$49,920
January 1, 2020	$13.00	$54,080
January 1, 2021	$14.00	$58,240
January 1, 2022	$15.00	$62,400

For employers with 25 or fewer employees, the minimum wage will increase on a slightly slower schedule, as follows:

Increase Date	New Rate	New Salary Threshold for Overtime Exemption
January 1, 2018	$10.50	$43,680
January 1, 2019	$11.00	$45,760
January 1, 2020	$12.00	$49,920
January 1, 2021	$13.00	$54,080
January 1, 2022	$14.00	$58,240
January 1, 2023	$15.00	$62,400

As a reminder, the federal Department of Labor is presently slated to increase the salary threshold for overtime exemption purposes to $47,476 on December 1, 2016 which may require some California employers to consider both the federal and state salary tests for overtime exemption purposes.

SB 3 also contemplates annual subsequent increases after the final scheduled increase, generally tied to consumer inflation, which the Director of Finance will determine by August 1st of each year with the increase, rounded to the nearest ten cents, to become effective the following January 1st. Once this formula is applied, the minimum wage may increase or stay the same, but it will not decrease.

Beginning in July 2017, the Director of Finance will be required to determine whether economic conditions can support the next scheduled minimum wage increase and, if not, the Governor would have the authority through a proclamation to temporarily suspend the next increase. The Governor would not be permitted to temporarily suspend scheduled

minimum wage increases more than two times, and if the Governor does temporarily suspend a scheduled minimum wage increase, all remaining scheduled increases shall be postponed by an additional year.

As noted above, these increases to the hourly minimum wage will also impact the salary level needed for exempt employee purposes, with the salary level ultimately increasing to $62,400 when the $15.00 level is reached in 2022.

Lastly, this new law amends Labor Code section 245.5 to remove the exemption from California's Paid Sick Leave requirements for in-home supportive service employees. Accordingly, beginning on July 1, 2018, in-home supportive service employee who work 30 or more days in California within a year from commencement of employment will be entitled to accrue and use paid sick leave, albeit on a slightly different schedule enumerated in new subsection (e) to Labor Code section 246.

No Duty to Track "Hours Worked" on Itemized Wage Statements for Exempt Employees (AB 2535)

While Labor Code section 226 requires employers to provide written wage statements containing specifically-enumerated information, including identifying the total hours worked, it contains an exception from the reporting the total hours worked for employees who are paid solely on salary and are exempt from overtime. Responding to concerns that there are many employees who are exempt from overtime, in which case employers may not track hours worked, but whose compensation is not "solely based on a salary" (e.g., salespersons paid on commission, high-ranking executives partially compensated with stock options, etc.), this law amends section 226 to expand this exception.

Specifically, in addition to the current language exempting tracking hours for those compensated solely on salary, new subsection (j) eliminates the need to show hours worked for employees exempt from minimum wage and overtime under a specified exemption for: (a) executive, administrative, or professional employees; (b) the "outside sales" exception; (c) salaried computer professionals; (d) parents, spouses, children, or legally-adopted children of the employer provided in applicable orders of the IWC; (e) directors, staff, and participants of a live-in alternative to incarceration rehabilitation program for substance abuse; (f) crew members employed on commercial passenger fishing boats; and (g) participants in national service programs.

Salary History by Itself not a Bona Fide Factor Justifying Gender-Based Wage Differential (AB 1676)

In 2015, California enacted SB 358, substantially revising its Equal Pay Act protections, including materially revising the standard when attempting to justify a gender-related wage differential. Citing a concern that salary history potentially institutionalizes prior discriminatory pay practices, this law originally proposed to add new Labor Code section 432.3 to prohibit any employer from seeking salary history information about an applicant for employment.

However, facing substantial opposition and since Governor Brown had vetoed a very similar bill in 2015 (AB 1017), this law was materially amended during the legislative process. As a result, rather than creating a new Labor Code provision prohibiting salary history discussions, it instead amends California's Equal Pay Act (Labor Code section 1197.5) to provide that "prior salary shall not, by itself justify any disparity in compensation."

Equal Pay Regardless of Race or Ethnicity (SB 1063)

Following up on last year's amendments to California's Equal Pay Act regarding gender-based wage differentials (SB 358), the Wage Equality Act of 2016 enacts nearly identical language to preclude wage differentials based on race or ethnicity. Specifically, it amends Labor Code section 1197.5 to prohibit employers from paying an employee at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work when viewed as a composite of skill, effort, and responsibility and performed under similar working conditions.

As with gender, the employer bears the burden to demonstrate that the wage differential is based upon one or more of the following factors: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; or (d) a bona fide factor other than race or ethnicity, such as education, training, or experience. As with the "bona fide factor" exception following SB 358's enactment, the employer must demonstrate that the factor is not derived from a race or ethnicity-based differential, is job-related to the position in question, and is consistent with a business necessity (i.e., an overriding legitimate business purpose that cannot be achieved through an alternative business practice). The employer must also demonstrate that each factor relied upon is applied reasonably and the one or more factors relied upon account for the entire wage differential.

Lastly, because SB 1063 amends section 1197.5 generally, it also prohibits employers from discriminating against employees who report or assist with concerns about race/ethnicity-based wage differentials, it provides the same enforcement mechanisms, and it incorporates its protections for employees to disclose, inquire, or discuss wages.

"Immigration-Related Practices" Protections Expanded (SB 1001)

California has made immigration-related abuses a legislative priority, including last year's bill enacting a new $10,000 penalty for E-Verify violations (AB 622), the 2014 amendment to FEHA prohibiting discrimination against drivers licenses issued to undocumented workers (AB 1660), and the 2013 bills prohibiting retaliation for "immigration-related practices" (AB 263 and SB 666). Continuing that trend, this law adds new Labor Code section 1019.1 to broaden the protections from "unfair immigration-related practices" beyond the retaliation context and extend them to any employee or applicant regardless of whether they have made a complaint. The law's author states it is intended to expand the current law to include applicants, and also to provide a state law remedy in addition to the currently-existing federal remedy for such violations which, in the author's estimation, operate too slowly.

Lastly, the law's author had expressed concern that immigrant workers who have been provided temporary legal status and the ability to apply for work authorization under President Obama's Executive Orders, including the Deferred Action for Parents of Americans of United States Citizens (DAPA) and the Deferred Action for Childhood Arrivals (DACA), may be subject to abuse. To address these concerns, this new section specifies that it shall be unlawful for an employer, in the course of satisfying federal law requirements for eligibility determinations (8 U.S.C. § 1324(b)) to: (1) request more or different documents than required under federal law to verify eligibility; (2) to refuse to honor documents that on their face reasonably appear to be genuine; (3) refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work; or (4) attempt to reinvestigate or re-verify an incumbent employee's authorization to work using an "unfair immigration practice" (defined in Labor Code section 1019).

This section also authorizes an employee or applicant (or their representative) to file a complaint with the Division of Labor Standards Enforcement, and authorizes the Labor Commissioner to award a penalty up to $10,000 and equitable relief.

Removing the Wage/Hour Exemption for Agricultural Employees (AB 1066)

Known as the Phase-In Overtime for Agricultural Workers Act of 2016, this law phases in additional daily and weekly overtime requirements for agricultural workers (as defined in Wage Order 14-2001) over the course of four years, beginning in 2019 (but with a three-year delay for employers with less than 25 employees). Under new Labor Code section 862, employers with more than 25 employees must pay daily and weekly overtime under the following schedule: (1) beginning January 1, 2019, agricultural workers are entitled to one-and-a-half times their regular rate for hours worked over nine and one-half hours daily or 55 hours weekly; (2) beginning January 1, 2020, agricultural workers are entitled to one-and-a-half times their regular rate for hours worked over nine hours daily and 50 hours weekly; (3) beginning January 1, 2021, agricultural workers are entitled to one-and-a-half times their regular rate of pay for hours worked over eight and one-half hours daily and 45 hours weekly; and (4) beginning January 1, 2022, agricultural workers are entitled to one-and-a-half times their regular rate for hours worked over eight

hours daily and 40 hours weekly. Beginning January 1, 2022, agricultural workers are entitled to double their regular rate of pay for hours worked beyond twelve hours daily.

As mentioned, employers with fewer than 25 employees have a three-year grace period, meaning these phase-in requirements do not commence until January 1, 2022, and the requirement to pay double-time commences January 1, 2025.

Beginning January 1, 2017, and except as otherwise expressly specified, all other existing California provisions regarding overtime compensation shall apply to agricultural workers.

The Governor will have the discretion to temporarily suspend a phased-in overtime requirement if the Governor also suspends a scheduled phased-in increase in the state minimum wage for specified "economic conditions" (as defined in SB 3). If the Governor temporarily suspends a phased-in increase, all implementation dates will be postponed by an additional year, and the Governor's suspension authority shall end upon no later than January 1, 2022.

Lastly, the law directs the Department of Industrial Relations to update IWC Wage Order 14-2001 regarding agricultural workers to be consistent with this new law's requirements, except that any existing provisions providing greater protections to agricultural workers shall continue to apply.

Overtime Provisions for Domestic Worker Employees (SB 1015)

In 2013, California enacted the Domestic Worker Bill of Rights (AB 241) which added Labor Code section 1454 and amended Wage Order 15-2001 to entitle a domestic work employee working as a personal attendant (as defined) the right to daily overtime after nine hours worked and weekly overtime after 45 hours worked. Entitled the Domestic Worker Bill of Rights of 2016, SB 1015 removes the prior January 1, 2017 sunset provision for section 1454, thus making those overtime provisions permanent.

"Foreign Labor Contractor" Requirement Update (SB 477)

As a reminder, in 2014, California enacted SB 477 to strengthen its regulations regarding "foreign labor contractors" who recruit foreign workers to relocate to California. For purposes of SB 477, "foreign labor contracting activity" is 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." However, foreign labor contracting for purposes of SB 477 does not include recruiting activities undertaken directly by the employer to locate workers for the employer's own use, and is also limited to the recruitment of non-agricultural employees (since farm labor contractors are subject to other regulations).

In light of SB 477's focus on unscrupulous traffickers, by July 1, 2016 all foreign labor contractors were required to register with the Labor Commissioner. By August 1, 2016,

the Labor Commissioner was required to post on its website the names of all registered foreign labor contractors, as well as a list of the labor contractors who were denied renewal or registration.

Although this law focuses on foreign labor contractors rather than employers, it has several implications for employers. First, new Business and Professions Code section 9998.2(c) precludes employers from knowingly entering into an agreement for the services of an unregistered foreign labor contractor. While employers are not subject to these registration requirements for their direct recruitment efforts, and SB 477 specifically exempts from joint and several liability those employers who use a registered foreign labor contractor, this liability exemption for the contractor's tortious activities only applies if the employer works with a registered foreign labor contractor.

Second, new Business and Professions Code section 9998.2(a) requires by July 1, 2016, an employer using the services of a foreign labor contractor to disclose to the Labor Commissioner the contact information of the employer's designated person to work with the foreign labor contractor, and submit a declaration consenting to jurisdiction if the employer's contact person has left the jurisdiction or is unavailable.

Lastly, the employer must be mindful that Business and Professions Code section 9998.6 precludes any person from discriminating or retaliating against a foreign worker or their family members because they have exercised any rights under this new law.

Expanded Protections for Janitorial Service Workers (AB 1978)

Known as the Property Service Workers Protection Act, this law enacts numerous measures to protect janitorial industry employees from sexual assault and other Labor Code violations. Amongst other things, it requires the Department of Industrial Relations to develop by July 1, 2018 training materials for both supervisors and workers regarding sexual harassment and sexual violence, and to establish requirements for such training. It also directs Cal-OSHA to require janitorial industry employers to include this training as part of its injury and illness prevention plans. It also establishes a system of janitorial contractor registration to encourage labor standards compliance and to establish prompt and effective sanctions for violating this part.

Employers to Provide New Hires with Written Information about Time-Off Related to Sexual Assault, Domestic Violence or Stalking (AB 2337)

Labor Code section 230.1 prohibits employers with more than 25 employees from discriminating or retaliating against employees who are victims of domestic violence, sexual assault, or stalking from taking time off from work for specified purposes to address the domestic violence, sexual assault, or stalking. This law adds new subsection (h) to require employers to provide written information regarding these rights under section 230.1 and rights under Labor Code section 230, subsections (c), (e) and (f) prohibiting retaliation and requiring employers to reasonably accommodate victims of domestic violence, sexual assault or stalking. Employers will be required to provide this written information to new employees upon hire and to other employees upon request.

By July 1, 2017, the Labor Commissioner must post on its website a form employers can use, and employers need not comply with these notice requirements until the Labor Commissioner posts the form. Alternatively, employers may develop and use their own notice provided it is "substantially similar in content and clarity" to the Labor Commissioner's form.

Prohibition on Inquiring About Juvenile Court Actions (AB 1843)

Consistent with the "ban the box" trend advancing nationwide, Labor Code section 432.7 prohibits employers from requesting applicants to disclose, or from using as a factor in determining employment conditions, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral to or participation in a pre- or post-trial diversion program. Since 2014 (SB 530), California employers have also generally been prohibited from inquiring about or using information related to a conviction that has been judicially dismissed or ordered sealed.

This law amends Labor Code section 432.7 to provide similar protection related to juvenile-related arrests as it currently provides for adult criminal histories. Specifically, new subsection (a)(2) precludes employers from requiring applicants to disclose, verbally or in writing, or from utilizing as a condition of employment, information concerning an arrest, detention, processing, diversion, supervision, adjudication or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law.

New subsection (a)(3) further provides that "conviction," for both subsections (a)(1) dealing with adults and (a)(2) dealing with juvenile courts, shall not include any adjudication by a juvenile court or any other court or action taken with respect to a person who is under the process and jurisdiction of juvenile court law.

Currently, section 432.7 authorizes health facilities to inquire of applicants seeking specific types of positions for information about certain crimes, notwithstanding this general prohibition applicable to most employers. This law retains this ability for convictions but imposes new limits regarding inquiries about juvenile-related offenses. Specifically, new subsection (f)(2) prohibits inquiries from health facilities about juvenile-related arrests, detentions, adjudications, etc. unless the information relates to a juvenile court conviction of a misdemeanor or felony for specific crimes within five years of the application. An employer seeking such disclosures will be required to provide the applicant with a list of the specific offenses under Health and Safety Code section 11590 or Penal Code section 290 for which disclosures are sought. However, even health providers are precluded from inquiring into an applicant's juvenile offense history that has been sealed by the juvenile court.

Non-California Venue Provisions in Employment Agreements (SB 1241)

This law adds new Labor Code section 925 prohibiting an employer from requiring an employee, who primarily resides and works in California, as a condition of employment

to agree to a provision that would require the employee to adjudicate outside California a dispute arising in California, or deprive the employee of the protection of California law with respect to a controversy arising in California. For purposes of this new law, "adjudication" includes litigation and arbitration.

Any such choice of law or venue provision would be voidable at the request of an employee. If the court invalidated such a provision, the matter would be adjudicated in California and under California law, and the prevailing employee would be entitled to recover reasonable attorneys' fees incurred enforcing this provision.

This new law will not apply to an employee who is individually represented by legal counsel in negotiating the terms of an agreement to designate either the choice of venue or law provisions.

This section applies to any contract entered into, modified or extended on or after January 1, 2017.

FEHA Protections Extended to Handicapped Employees Hired Under Special Licenses (AB 488)

While the Fair Employment and Housing Act (Government Code section 12940 *et seq.*) generally prohibits harassment or discrimination against "employees," Government Code section 12926 had excluded from the definition of "employee" individuals employed by their parents, spouse or children, and also excluded "individuals employed under a special license in a non-profit sheltered workshop or rehabilitation facility." In 2014, California expanded FEHA to protect unpaid interns and volunteers (AB 1443), and this new law continues that expansion trend by ensuring individuals with disabilities hired under a special license for sheltered work are provided the same protections as other employees under FEHA.

New Government Code section 12926.05 provides that individuals employed under a special license under Labor Code section 1191 or 1191.5 (regarding hiring employees with physical or mental handicaps) may bring an action for harassment or discrimination under FEHA. If so, the employer may establish an affirmative defense by showing that (1) the challenged activity was permitted by statute or regulation; and (2) the challenged activity was necessary to serve employees with disabilities under a special license pursuant to Labor Code sections 1191 and 1191.5. This new section further specifies that it shall not be disability discrimination for employers to pay less than the state minimum wage to disabled employees employed pursuant to sections 1191 or 119.5.

DFEH Authorized to Investigate and Prosecute Human Trafficking Complaints (AB 1684)

Since 2005, Penal Code section 236.1 and Civil Code section 52.5 have authorized human trafficking victims to pursue civil and criminal claims against traffickers. However, citing a concern these remedies are rarely utilized, this law amends Government Code section 12930 to authorize the DFEH to receive, investigate,

conciliate, mediate and prosecute human trafficking complaints on behalf of a human trafficking victim. The law further provides that any damages recovered will belong to the victim but costs and attorney's fees awarded in such action will belong to the DFEH. This law unanimously passed the Legislature without opposition.

PAGA Amendments

As part of the 2016-2017 Fiscal Year Budget Change Proposal, the Governor passed several amendments to PAGA—purportedly intended to reduce litigation costs for employers and improve outcomes for employees. The LWDA states on its website that the following procedural changes to PAGA are in effect as of June 27, 2016.

- A $75 filing fee is required with new PAGA claim notices and any employer responses to an initial claim (including any employer cure). This fee is waivable for those qualified as *in forma pauperis*.

- PAGA claim notices must now be filed online to the LWDA, with written notice (certified mail) to the employer. Similarly, employer cure notices and/ or employer responses to a PAGA claim must also be filed online, with a copy sent to the aggrieved employee by certified mail.

- The LWDA's timeframe to review notices extends to 60 days. (Formerly 30 days.)

- Alleged aggrieved employees filing in court must provide a file-stamped copy of their PAGA Complaint to the LWDA (for any case filed on or after July 1, 2016).

- Court approval is required for any settlement of a PAGA civil action, whether or not the settlement includes an award of PAGA penalties.

- Proposed PAGA settlements are to be submitted to the LWDA at the same time they are submitted to the court.

- A copy of any court judgment, and any other order that awards or denies PAGA penalties, must be provided to the LWDA.

These are essentially procedural changes and less-impactful than some of the broader, more substantive changes contained in the original proposal. For example, the original proposed amendments included an amnesty program for invalidated "commonplace industry practices" and a provision allowing the LWDA to object-to or comment-on proposed PAGA settlements. Nonetheless, the actual amendments may be a precursor to more sweeping reform, and the legislative environment surrounding PAGA actions deserves close attention.

Increased Paid Family Leave Benefits (AB 908)

Under California's family temporary disability insurance program, employees may receive up to 6 weeks of wage replacement benefits when taking time off work to care for specified persons (e.g., child, spouse, parent, etc.) or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. Citing a concern that the relatively low wage replacement rate dissuaded employees from using this benefit, this newly-enacted law amends Insurance Code section 3301 to increase the wage replacement benefits. Specifically, it modifies the formula for calculating these benefits to ensure a minimum weekly benefit of $50, and to increase the wage replacement rate from the current 55% to 70% for most low-wage workers, and to 60% for higher wage earners.

Beginning January 1, 2017, this bill also removes the 7-day waiting period for these family leave benefits.

New Workplace Smoking Prohibitions Took Effect June 9th (ABx2 6 and SBx2 6)

Labor Code section 6404.5 prohibits smoking of tobacco products inside an enclosed space at a place of employment and enumerates fines for violations of these protections. ABx2 6 amends this section to use the new definition of "smoking" (contained in amended Business and Professions Code section 22950.5) that includes "the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking."

SBx2 6 also expands these prohibitions to include so-called "owner-operated businesses" (i.e., those with no employees and the owner-operator is the only employee). It eliminates most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities, and employee break rooms.

Because of their unique procedural history and subject matter, these laws took effect June 9, 2016.

Heat Illness Prevention Regulations for Indoor Employees (SB 1167)

Since 2006, California's Division of Occupational Safety and Health (DOSH) has adopted and enforced regulations establishing a heat illness prevention standard for outdoor workers. This law requires DOSH, by January 1, 2019, to propose for the review and adoption a heat illness and injury prevention standard applicable to workers working in indoor places of employment. This standard shall be based on environmental temperatures, work activity levels and other factors. The DOSH also will have the authority to propose high heat provisions limited only to certain industry sectors.

As a reminder, the Division of Occupational Safety and Health has previously produced a flyer entitled "Cal/OSHA Heat Illness Prevention for Indoor Working Environments"

which focuses on five key areas of prevention: a written IIPP; frequent drinking of water; rest breaks; acclimation and weather monitoring; and emergency preparedness.

Employer Participation in State-Sponsored Retirement Program (SB 1234)

In 2012, California enacted SB 1234 to create the California Secure Choice Retirement Savings Program (SCRSP) and to create a feasibility study to determine whether the legal and practical conditions of implementation of SCRSP could be met. Simply summarized, the SCRSP would establish a state administered retirement program for employees that do not have a private retirement plan through their employers, but exempts employees covered under the Railway Labor Act, or provided certain types of pensions, or that have certain enumerated private retirement plans through their employers.

This law expresses legislative approval of the SRSCP and its implementation on January 1, 2017, and also changes the implementation requirements for employers, depending on size. Specifically, employers with 100 or more employees must have an arrangement to allow employees to participate in the SRCSP within 12 months after opening of enrollment, employers with 50 or more employees must have such an arrangement within 24 months after opening of enrollment, and employers of five or more employees must have an arrangement within 36 months after opening of enrollment. Notwithstanding these deadlines, any employer may enact a payroll deposit retirement savings arrangement early if they prefer.

The Employment Development Department will be required to develop and disseminate to employers information about the SCRSP, which employers must provide to employees at time of hire, and the employee must acknowledge receipt of these materials.

Increased Local Enforcement to Combat Wage Theft (SB 1342)

Citing concerns about the continued prevalence of wage theft, especially for lower income workers, this law adds new Government Code section 53060.4 to authorize city or county legislative bodies to delegate subpoena-issuing authority for enforcing local laws or ordinances, including local wage laws, to officials or department heads.

New Temporary Pay Rules Regarding Security Guards (AB 1311)

Labor Code section 201.3 sets forth specific rules regarding wages for temporary service employers, including generally requiring such employees be paid weekly and not later than the regular payday of the following "calendar" week. Responding to a recent court decision regarding security guards, this law enacts new subsection (b)(1)(B) and creates a new industry-specific rule for security guards employed by temporary service providers since that industry generally uses a different payday than other industries. Under this new rule, registered security guards working for temporary service employers must be paid weekly, regardless of when the assignment ends, and must be paid no later than the regular payday of the following "workweek" (rather than "calendar week" for other industries). This law was enacted on an urgency basis and is immediately effective.

Expedited Release of Prevailing Wage Escrowed Amounts (AB 326)

Labor Code section 1742.1 presently provides that in prevailing wage proceedings, a contractor or subcontractor may avoid certain penalties by depositing the full amount of an assessment or notice with the Department of Industrial Relations (DIR). Responding to concerns the DIR is not required to release these funds within any particular timeframe, this law amends section 1742.1 to specify the DIR must release the escrowed funds, plus any interest earned, to the person entitled to those funds "within 30 days" following either the conclusion of all administrative and judicial review, or upon receiving written notice from the Labor Commissioner of a settlement or a final disposition of an assessment issued, or from the authorized representative of the awarding body or a settlement or final disposition.

Bond Requirements for Minimum Wage Violations (AB 2899)

Labor Code section 1194 prohibits employers from paying employees a wage less than the minimum wage, and allows aggrieved employees to recover lost wages, civil penalties, and liquidated damages for violations. Labor Code section 1197.1 allows a party to contest a citation issued by the Labor Commissioner through the superior court.

This law amends section 1197.1 to require a person seeking a writ of mandate contesting the Labor Commissioner's ruling to post with the Labor Commissioner a bond equal to the unpaid wages, excluding penalties, in favor of the aggrieved employee. It also specifies the procedures for an appellant to pay any judgment as result of that hearing or the withdrawal of the writ. It provides that if the employer fails to pay the amounts owed within 10 days after the proceedings are concluded, the portion of the bond needed to cover the amount owed will be forfeited by the employer to the employee.

Elimination of Some Employment Verification Requirements (AB 2532)

Unemployment Insurance Code sections 9601.5 and 9601.7 require any state or local government agency, and any private employer contracting with a state or local government agency, that provides specified employment services to verify an individual's legal status or authorization to work prior to providing services to that individual in accordance with federal procedures. This law repeals both of these sections and the requirements contained in them.

MUNICIPAL DEVELOPMENTS

San Diego's Minimum Wage and Paid Sick Leave Ordinance

San Diego's Proposition I—formally the "Referendum of Ordinance Regarding Earned Sick Leave and Minimum Wage" (the Ordinance)—received over 63 percent of the votes on the ballot measure on June 7, 2016. To give some history, the City Council had previously approved the Ordinance on August 18, 2014, after which a referendum petition qualified the measure for the ballot, and the Council subsequently voted to place it on the ballot in 2016.

Since San Diego voters passed the measure, the City passed and the Mayor approved an updated Implementing Ordinance modifying substantive portions of the new rule, as discussed below.

Who is Affected?

The Ordinance defines employers and employees broadly.

Employers are defined as any "person or persons, including associations, organization, partnerships, business trusts, limited liability companies, or corporations, who exercise control over the wages, hours, or working conditions of any employee, engage an employee, or permit an employee to work." Note, a narrow exception to this definition includes aged, blind, or disabled people who receive in-home supportive services.

Eligible employees are defined as "any person who, in one or more calendar weeks of the year, performs at least two hours of work within the geographic boundaries of the City for an employer, and who qualifies for the payment of minimum wage under the State of California minimum wage law." To determine if an employer is within the geographic boundaries of the city, visit here.

San Diego's New Minimum Wage

Proposition I increases the current minimum wage from $10 per hour to $10.50 per hour. Looking forward, starting January 1, 2017, the minimum wage will become $11.50 in the City of San Diego, and starting January 1, 2019, the minimum wage will increase "by an amount corresponding to the prior year's increase, if any, in the cost of living, as defined by the Consumer Price Index."

Unlike the California minimum wage, these wage rates will not affect the exemption salary tests in California. Rather, the minimum wage rate used to calculate this amount must be the state minimum wage and not municipal.

San Diego's New Sick Leave Entitlement

California law currently requires employees who work in California for 30 or more days within a year from the beginning of employment to be entitled to use 3 days or 24 hours of sick leave per year, whichever is greater, with a possible cap and carry-over of that time at 48 hours.

San Diego's Ordinance requires these same employees, working within the boundaries of the City of San Diego (as discussed above), must receive up to five days or 40 hours of sick leave per year.

Also in line with the California law, the San Diego Ordinance states that sick leave must begin to accrue when employment starts, but employers need not allow employees to use it until the employee's 90th day of employment.

Leave under the new Ordinance may be used under the following circumstances:

(1) if an employee is physically or mentally unable to work due to illness, injury, or a medical condition;

(2) for "Safe Time" defined as time away from work necessary to handle certain matters related to domestic violence, sexual assault, or stalking;

(3) for medical appointments;

(4) to care for or assist "certain family members" with an illness, injury, or medical injury; and

(5) a place of business is closed by order of a public official due to a Public Health Emergency, or an employee is providing care or assistance to a child, whose school or child care provider is closed by order of a public official due to a Public Health Emergency.

Please note, the ability to use Paid Sick Leave for school/child-care-related closures and emergencies differs from the California law.

Alternative Accrual Methods, Including "Frontloading," and PTO Exception

As with the California law, the default accrual rule under the San Diego Ordinance is that employees must receive one hour of paid sick leave for every 30 hours worked.

While the San Diego Ordinance initially did not recognize any alternative accrual methods, the Implementation Ordinance amends this and allows "lump sum" or "frontloading" method that is allowed for under the general California sick leave law.

Section 39.0105(b)-(c) of the Amended Ordinance now states:

(b) Employers must provide an Employee with one hour of Earned Sick Leave for every 30 hours worked by the Employee within the geographic boundaries of the City, but Employers are not required to provide an Employee with Earned Sick Leave in less than one-hour increments for a fraction of an hour worked. Employers may cap an Employee's total accrual of Earned Sick Leave at 80 hours.

(c) An Employer may satisfy the accrual and carry-over provisions of this section if no less than 40 hours of Earned Sick Leave are awarded to an Employee at the beginning of each Benefit Year for use in accordance with this Division, regardless of the Employee's status as full-time, part-time, or temporary.

Employers utilizing the lump sum or frontloading method may not differentiate between classes of employees (e.g., part-time, full-time, temporary, etc.) with regard to the amount they bank at the beginning of the benefit year, as defined within the Ordinance.

Unlike the California sick leave law, the San Diego Ordinance also initially did not make clear that employers providing so-called "personal time off" (PTO) plans would not be required to provide additional sick leave. Responding to concerns this omission would create conflict with the state law and discourage PTO plans, Section 39.0105(g) of the Amended Ordinance specifies:

(g) An Employer who provides an Employee with an amount of paid leave, including paid time off, paid vacation, or paid personal days sufficient to meet the requirements of this section, and who allows this paid leave to be used for the same purposes and under the same conditions as the Earned Sick Leave required by this Division, is not required to provide additional Earned Sick Leave to the Employee.

As a reminder, the San Diego Ordinance allows sick leave to be used for slightly different purposes than the state law, so employers wishing to rely upon this PTO exception from the San Diego Ordinance should compare their plan to ensure it allows PTO to be used "for the same purposes and under the same conditions" as the San Diego Ordinance.

While the San Diego Ordinance initially did not allow employers to cap sick leave accrual, the amendments allow employers to cap accrual at 80 sick leave hours, the theory being that an employee may accrue enough to use the full amount in one year, and have enough ready to carry-over to the next year and begin using immediately. (As reminder, under the California law, employees may accrue up to 48 hours, or double the 24 hours of usage allowed).

Sick Leave Paid at Employee's Regular Rate of Pay

Similar to the California sick leave law, the rate of pay at which employers are charged with paying out sick leave is at the employee's regular rate of pay, as opposed to their base rate of pay. For employers with a non-exempt workforce who utilize different rates of pay, commissions, structured bonus plans, or any other wage that may require adjustment of their overtime rate, must be cognizant of this and revise their payment practices for sick leave or paid time off accordingly.

Updated Posting and Notice Deadlines

Under the Implementing Ordinance, the City is responsible for providing posters and individual notices, templates for which can now be found here. Employers are charged with disseminating this individual notice, which must include the employer's name, contact information, and information on how the employer satisfies the requirements under the Ordinance, to all employees by October 1, 2016. This differs slightly from the California sick leave law, which requires notice via the Wage Theft Prevention Act, and which is only required for non-exempt employees. There is nothing within the Ordinance

which requires acknowledgment or signature of this notice. However, employers are urged to keep a record of this for purposes of potential audits by the City's Enforcement Office, as defined within the Ordinance.

Recordkeeping Requirements and Enforcement

Employers are required to create contemporaneous records documenting their employees' wages paid and accrual and use of sick leave. Employers are already required to provide such a record on their employees' wage statements under the general California sick leave law. Under the City's Ordinance, employers must also "allow Enforcement Official[s] reasonable access to these records in furtherance of an investigation conducted" pursuant to the Ordinance.

The lengthiest and most detailed update to the Ordinance is within section 39.0113, which outlines the authority and duties of the City's newly developed Enforcement Office, including investigatory rights, access rights, the ability to promulgate regulations, and implementation of the complaint process.

The Take Away

Employers are urged to review and update their sick leave and/or paid time off policies and practices to ensure they are compliant, raise the minimum wage of anyone working within the City of San Diego to at least $10.50 per hour, watch for the notice and posting requirements from the City, and maintain appropriate records as discussed within the Ordinance.

For more information on California's state-wide sick leave law, see Wilson Turner Kosmo's 2015 Special Alert here: California Amends Recently-Enacted Paid Sick Leave Law, Effective Immediately. You may also review the City's Frequently Asked Questions, as well as updates regarding the Minimum Wage and Sick Leave Ordinance, here.

Berkeley's Paid Sick Leave Law and Minimum Wage Increase

Berkeley California recently passed its own minimum wage increase and sick leave ordinance.

Minimum wage increases in Berkeley are now scheduled as follows:

Date	Minimum Wage
October 1, 2016	$12.53
October 1, 2017	$13.75
October 1, 2018	$15.00
October 1, 2019 and annually thereafter	Increase determined using local CPI

As with similar municipal ordinances in California, the Berkeley Ordinance applies to any employee who, in a calendar week, performs at least two hours of work within the city boundaries.

In addition to those sick leave benefits outlined within the general California law, beginning on October 1, 2017, Berkeley employees are to begin accruing additional paid sick leave at a rate of one hour for every 30 hours of work (and in one hour increments only). For small businesses with fewer than 25 employees, there is an accrual cap of 48 hours per year, and for all other businesses, the cap is 72 hours. All employers may limit use of sick leave to 48 hours per year. Like with the general California sick leave law, accrued but unused sick leave must carry over from year to year, but need not exceed the cap. Note, the ordinance does not address the use of a "lump sum" or "frontloading" method for providing sick leave.

Berkeley's ordinance also states that these requirements may be waived in a bona fide collective bargaining agreement, if the waiver is explicitly included in unambiguous terms. It also provides that employers with other paid leave policies that meet the law's accrual, cap, carry-over, and use requirements, are not required to provide additional paid sick leave.

There are also several notice, posting and record-keeping requirements, as well as enforcement and penalties associated with not adhering to the ordinance, which are outlined within the Berkeley Ordinance itself.

Los Angeles' Paid Sick Leave Law and Minimum Wage Increase

Somewhat similar to the San Diego and California minimum wage increases, the minimum wage for Los Angeles employers with more than 25 employees increased to $10.50, and will continue to increase each July 1st, reaching $15.00 on July 1, 2020. For employers with 25 or fewer employees the minimum wage will increase in a similar format, starting to $10.50 on July 1, 2017 and reaching $15.00 on July 1, 2021.

On July 1, 2016, the Los Angeles Paid Sick law took effect for employers with more than 25 employees, and the law will take effect for employers with 25 or fewer employees on July 1, 2017. While the Los Angeles version more closely tracks the California version than the San Diego version, there are several key differences, including that employees are entitled to use six days of paid sick leave and accrue up to 72 hours (compared to three days and 48 hours respectively), and there is no exemption for collective-bargaining level employees.

The City of Los Angeles has issued the required poster providing a general overview of the minimum wage increase and sick leave law here.

San Francisco Enacts Paid Parental Leave Ordinance

San Francisco enacted its Paid Parental Leave Ordinance (Ordinance No. 160065), as well as a recent amendment to that ordinance, which will require beginning on January 1,

2017, employers with 50 or more employees to pay to an employee on "parental leave" (as defined) the difference (so-called "supplemental compensation") between their gross weekly wage and the Paid Family Leave Benefits paid from the state of California under its Paid Family Leave program. (Employers with 35 or more employees would need to make such payments beginning July 1, 2017, and employers with 20 or more employees would need to make such payments beginning January 1, 2018).

Please note also, in contrast with the pending bill that would require employers to provide unpaid parental leave to employees who worked 1,250 hours in the preceding 12 months (SB 654 [discussed above]), the San Francisco Ordinance applies to any employee who (1) began employment with the "Covered Employer" (as defined) at least 180 days prior to the leave period; (b) performs at least eight hours of work per week for the employer in San Francisco; (c) at least 40% of those total weekly hours worked for the employer are in San Francisco; and (d) who is eligible to receive paid family leave compensation under the California Paid Family Leave law for the purpose of bonding with a new child.

As noted, the Ordinance requires the "Covered Employer" to provide "supplemental compensation" to an employee on leave representing the difference between the amount paid from the California Paid Family Leave fund and the employee's "gross weekly wage." Where the employee has multiple Covered Employers, this supplemental compensation can be apportioned between or among the employers based on the percentage of the employee's gross weekly wages received from each employer. However, in cases where an employee works for a Covered employer and a non-Covered Employer, the Covered Employer is responsible only for its percentage of the employee's total gross weekly wages.

The Ordinance also notes that an employer's Supplemental Compensation obligation may also be proportionately capped by reference to the State maximum weekly benefit amount, depending on income levels.

As with many recent statutes and ordinances, this Ordinance requires the employer to post a poster to be developed by the San Francisco Office of Labor Standards Enforcement, it requires the employer to retain "Supplemental Compensation" records for three years; it prohibits retaliation, and authorizes agency enforcement.

More information about the San Francisco Ordinance can be found on the San Francisco's Office of Labor Standards Enforcement website (sfgov.org/olse) or at sfgov.org/olse/paid-parental-leave-ordinance).[i]

FEDERAL REGULATORY DEVELOPMENT

U.S. Department of Labor Issues Sick Leave Rules for Federal Contractors

This new regulation implementing Executive Order 13706, which was signed by President Barack Obama in 2015, grants sick leave to federal contractors. The near-500 page rule requires federal contractors to give employees at least 1 hour of paid sick leave for every 30 hours of work. Employees must be able to accrue and use at least 56 hours

of sick leave per calendar year, and sick leave will carry over from year to year, although need not be paid out upon termination. Contractors are also allowed to "frontload" or provide a "lump sum" of 56 hours per year, to avoid the administrative burden of tracking accrual. Like our own California sick leave law, this leave may be used for physical or mental illness, for preventative care, to care for a family member, or to deal with consequences of domestic violence, sexual assault or stalking.

This new regulation does not supersede any more generous local, state or federal law, or collective bargaining agreement. Further, contractor's existing paid time off policies may fulfill these new obligations, as long as the policy provides employees with at least the same rights and benefits as the regulation. The DOL has given itself the authority to investigate violations of this regulation, which includes interference with leave or discrimination based on use of same, as well as a contractor's failure to meet the requirements of the regulation itself. Consequences of violating the regulation range from suspension from federal contracting for up to three years, or possible debarment.

The new regulations apply to federal contracts entered into after January 1, 2017. For more information on the regulation, see the DOL's Wage and Hour Division fact sheet, here.

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[i] The legislative content in this report is non-exhaustive, is for informational purposes only, and is not for the purpose of providing legal advice. You should always contact legal counsel to determine if this information, and your interpretation of it, is appropriate to your particular situation.