LEGISLATIVE SUMMARY

The 2017 legislative session has reached the critical halfway point now that the deadline for bills to pass their house of origin has expired. Not unexpectedly, given the Legislature's current political composition, a number of significant employment bills cleared this hurdle and will move forward, including bills that would:

- Prohibit employers from inquiring about salary history during the hiring process (AB 168);
- Require larger employers to collect and publish information concerning gender pay differences for exempt employees (AB 1209);
- Preclude employers from inquiring about criminal convictions until after a conditional offer of employment and impose new limitations upon and disclosure requirements for considering criminal convictions (AB 1008);
- Require employers with more than 20 employees to provide up to 12 workweeks of parental leave (SB 63);
- Prohibit employers from responding to federal immigration agency requests or assisting with "immigration worksite enforcement actions" unless certain conditions are met (AB 450);
- Prohibit employers from discriminating based on an employee's reproductive health decisions (AB 569);
- Enable private employers to grant hiring preferences to veterans (AB 353);
- Increase to $47,476 the salary threshold level for the overtime exemption (AB 1565); and
- Expand the Labor Commissioner's powers when investigating retaliation complaints, including allowing pre-determination injunctive relief (i.e., TRO's) (SB 306).

One bill that would have imposed new requirements regarding gratuities for many employers, including hotels and restaurants (AB 1099) was amended to now only apply to "gig economy" employers, and most specifically Uber and Lyft drivers. Whether these amendments signal a new effect to regulate the "gig economy" more generally remains to be seen.

Looking ahead, Legislature will soon commence summer recess before returning in August to pass bills before the September 15th deadline. In the interim, below is a summary of and status update for the pending employment bills of general application.

PENDING STATEWIDE BILLS

New Rules Regarding Federal Agency "Immigration Worksite Enforcement Actions" (AB 450)

Work-related immigration topics have been a particular legislative priority recently, and this wide-ranging bill continues that trend and highlights the current tension between California and the federal government related to immigration. Amongst other things, it would limit California employers from voluntarily complying with federal immigration authorities, impose new notice requirements, enact many new statutory penalties and provide greater Labor Commissioner access to the worksite.

For instance, new Labor Code section 90.1 would, "except as otherwise required by federal law," prohibit employers or their agents from providing a federal government immigration enforcement

agent access to non-public areas of a place of labor without a judicial warrant. Similarly, new Labor Code section 90.2 would, "except as otherwise required by federal law," prohibit an employer or their agents from providing a federal immigration enforcement agency access to the employer's employment records, including I-9 forms, without a subpoena. While federal immigration laws presently allow federal immigration agencies access to non-public portions of an employer either through a warrant or the employer's consent, these new provisions would essentially remove the employer's ability to provide consent and require a warrant or subpoena.

Both new sections would authorize the California Labor Commissioner to recover civil penalties ranging from $2,000 to $5,000 for a first violation, and between $5,000 to $10,000 for each subsequent violation. For violations of section 90.1, the Labor Commissioner would have the authority to lower or waive the civil penalty if the federal government immigration enforcement agent accessed the non-public portions of a worksite without the consent of the owner or person in charge.

New Labor Code section 90.25 would require employers that receive a notice of inspection of I-9 records or other employment records by a federal immigration agency to provide written notice to each employee and their representative of this impending inspection. This notice would need to be delivered within 24 hours of the employer receiving the notice of inspection, would need to be hand-delivered if possible, and if not possible, by mail and email (if known) in the language the employer normally uses for notices. This notice would need to include: (1) the name of the federal immigration agency conducting the inspection; (2) the date the employer received notice; (3) the nature of the inspection, if known; (4) a copy of the notice of the notice of inspection; and (5) any other information the Labor Commissioner deems material and necessary.

Once again except as required by federal law, the employer's notice obligations would continue after the inspection is concluded. Within 24 hours of receiving notice regarding the results of the records inspection, the employer would need to comply with the same notice procedures to advise each affected employee and their representative of: (1) a description of all deficiencies or other items identified in the federal immigration inspection results notice; (2) the time period for correcting any potential deficiencies identified; (3) the date/time of any meetings with the employer to correct the deficiencies; (4) the employee's right to be represented during this meeting; and (5) any other information the Labor Commissioner deems material and necessary.

Employers who fail to provide this advance notice or the post-inspection notices to all affected employees or their representatives would be subject to civil penalties ranging from $2,000 to $5,000 for the first violation, and from $5,000 to $10,000 for each subsequent violation. Unlike the statutory penalties in proposed new Labor Code sections 90.1 and 90.2 against employers who provide improper access, these statutory penalties would not be required if the federal agency had specifically directed the employer not to provide notice to an affected employee.

In addition to notifying potentially affected employees, new Labor Code section 90.8 would also require employers, except as prohibited by federal law, to notify the Labor Commissioner within 24 hours of learning of an impending worksite enforcement action. In those situations where a federal immigration agent appears at "or near" the employer without advance notice, the employer shall immediately notify the Labor Commissioner and the employees' representative upon learning of the worksite enforcement action.

Recent amendments have deleted prior language suggesting that during these visits the Labor Commissioner would be entitled to conduct a "wall to wall" audit of the employer regarding any other potential wage and hour or safety issues or to participate in the inspection and essentially represent an employee.

Failure to notify the Labor Commissioner, except where directed by the federal agency or if otherwise prohibited by federal law, will result in statutory penalties ranging from $2,000 to $5,000 for the first violation, and between $5,000 to $10,000 for each subsequent violation.

AB 450 would also impose new limits on an employer's ability to conduct self-audits even outside the presence of a federal immigration agency. New Labor Code section 90.9 would require the employer, except as required by federal law, to notify the Labor Commissioner before conducting a self-audit or inspection of I-9 forms and before checking the employee work authorization documents of a current employee at a time or in a manner not required by federal law. Recent amendments have again deleted prior language suggesting the Labor Commissioner would be allowed to attend any self-audit, although it is less clear whether the Labor Commissioner will still contend it already has that authority even if not mentioned in this new statute. Failure to provide this notice would also subject the employer to statutory penalties from $2,000 to $5,000 for a first violation, and between $5,000 to $10,000 for each subsequent violation except where a federal agency or a federal statute prohibited notifying the Labor Commissioner.

In 2016, the Legislature enacted SB 1001 and new Labor Code section 1019.1 prohibiting employers from engaging in various actions while determining the employment eligibility of an applicant or employee (e.g., refusing documents that appear reasonably genuine, requiring more or different documents, etc.). AB 450 would enact new Labor Code section 1019.2 to prohibit employers or their agents from checking the employment eligibility of a current employee, including conducting a self-audit or inspection of I-9 Forms, at a time or in a manner required under federal law. As with section 1019.1, new section 1019.2 would authorize the Labor Commissioner to recover civil penalties ranging from $2.000 to $5,000 for the first violation and between $5,000 to $10,000 for each subsequent violation.

Lastly, new Labor Code section 98.85 would authorize the Labor Commissioner, if it determines an employee complainant or witness is needed regarding an investigation related to wages, compensation, the return of tools or a discrimination charge, to issue a certification to the employee complainant or witness that they have submitted a valid complaint or are cooperating in an investigation.

Status: Passed the Assembly and is pending in the Senate.

Job-Protected "Parental Leave" (SB 63)

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

Unlike the California Family Rights Act (CFRA, Government Code section 12945.2) and the Family Medical Leave Act (FMLA), which apply only to employers with more than 50 employees, this bill would define "employer" as either: (a) an entity employing 20 or more persons "to perform services for a wage or salary;" or (b) the state of California or any of its political or civil subdivisions, except for specified school districts. However, as with CFRA and the FMLA, an employee would need to have worked more than 12 months for the employer, and to have worked at least 1,250 hours during the previous 12-month period.

Notwithstanding the definition of "employer" noted above, this bill states that it would be an unlawful employment practice to deny up to 12 weeks of parental leave to an employee who meets the hours and time-worked requirements and "works at a worksite in which the employer employs at least 20 employees within 75 miles."

The bill also specifies that employees eligible for "parental leave" are also entitled to take leave under Government Code section 12945 (pregnancy disability, child birth and related conditions) if otherwise qualified for such leave. However, this new law would not apply to an employee subject to both the CFRA and the FMLA.

As with CFRA, an employer shall be deemed to have refused to provide this job-protected leave unless, on or before the leave's commencement, the employer guarantees reinstatement in the same or comparable position. This bill would also authorize the employee to use accrued vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off negotiated with the employer during this parental leave. The basic minimum duration of the leave shall be two weeks, but an employer would be permitted to grant requests for additional occasions of leave lasting less than two weeks.

Employers would also be required to maintain and pay for an eligible employee's medical coverage under a group health plan for the duration of the parental leave, not to exceed 12 weeks over the course of a 12-month period, commencing on the date the parental leave begins, and at the level and conditions that would have existed if the employee continued working. Notably perhaps, SB 63 does not contain the language contained in CFRA authorizing the employer to recover these medical premiums if the employee failed to return from leave, if certain conditions are present.

It also provides that if the employer employs two employees who are entitled to leave for the same event otherwise entitling them to "parental leave," the employer may, but is not required to, grant simultaneous leave to both employees. However, and again in contrast with the CFRA, SB 63 does not contain language suggesting that where both parents work for the same employer, the employer may limit the overall leave to the maximum amount a single employee could use.

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

Lastly, it provides this leave shall run concurrently with parental leave taken under Education Code section 44977.5 for certain certificated school employees.

This bill is very similar to last year's version which Governor Jerry Brown vetoed, except that this year's version proposes 12 weeks of leave compared to six.

Status: Passed the Senate on a party-line vote and is pending in the Assembly.

Prohibition on Salary History Inquiries (AB 168)

This bill would add new Labor Code section 432.3 to preclude employers from inquiring orally or in writing, personally or through an agent, about salary history information of an applicant, including about compensation and benefits. It would also require private employers, upon reasonable request, to provide to an applicant the pay scale for a position.

A similar bill (AB 1676) was introduced last year, before being modified to instead amend the Equal Pay Act to state that prior salary history by itself would not be a defense to an equal pay-related claim. Similar prohibitions on salary history inquiries have already passed in several states (Massachusetts, Oregon, and the District of Columbia), and several large cities (Philadelphia and New York City) and are pending in other states and municipalities.

Status: Passed the Assembly with some bi-partisan support and is now pending in the Senate.

"Ban the Box" Bill (AB 1008)

The topic of when and how employers may consider criminal convictions continues to be a hot topic, both nationally and in California. For instance, in 2013, California enacted a law (AB 218) and added Labor Code section 432.9 precluding state agencies and cities from inquiring about or using information related to criminal conviction history except in specified instances. Similarly, in 2014 and 2016 the cities of San Francisco and Los Angeles, respectively, enacted "Fair Chance" Ordinances limiting how and when employers could consider criminal conviction information regarding applicants. The Fair Employment and Housing Council recently issued final regulations regarding "Consideration of Criminal History in Employment Decisions" which will take effect July 1, 2017. https://www.dfeh.ca.gov/files/2017/03/FinalText-CriminalHistoryEmployDecRegulations.pdf

Against this backdrop, AB 1008 would amend the Fair Employment Housing Act to preclude most private employers from inquiring about an applicant's criminal record or conviction history until after a conditional employment offer is made, and would impose new notice and disclosure requirements if this information is sought.

Specifically, new Government Code section 12952 would preclude employers from including on employment applications any question seeking the disclosure of an applicant's criminal history, or to otherwise inquire or consider the conviction history of an applicant, until after a conditional employment offer is made. It would also preclude the consideration or dissemination of the following specific items during any background checks: (a) arrests not followed by conviction; (b) referral to or participation in a pretrial or post-diversion program; (c) convictions that have been sealed, dismissed, or expunged pursuant to law; (d) misdemeanor convictions for which no jail sentence can be

imposed, or infractions; and (e) misdemeanor convictions for which three years have passed since the date of conviction or felony convictions for which seven years have passed since conviction. It would also prohibit employers from interfering with or restraining the exercise of any right provided under this new section.

Before denying a position based upon an applicant's conviction history, the employer would also need to conduct an individualized assessment of whether the conviction history has a direct and adverse relationship with the specific duties of the position. Employers would need to consider at least all of the following: (a) the nature and gravity of the offense; (b) the time that has passed since the offense and completion of any sentence; and (c) the nature of the job held or sought. Employers would also be specifically directed to conduct this individualized assessment consistent with the Equal Employment Opportunity Commission's 2012 Guidance on the Consideration of Arrests and Conviction Records in Employment Decisions. The EEOC's Guidance is available at: https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

If an employer makes a preliminary decision to deny employment, the employer must provide written notice of this intent to the applicant and contain all of the following: (a) an identification of the conviction that is the basis for the denial; (b) a copy of the conviction history report, if any; (c) examples of mitigation or rehabilitation evidence the applicant may voluntarily provide; and (d) notice of the applicant's right to respond and the deadline for doing so.

The applicant will then have at least ten business days to respond before a final employment decision can be made. This response can consist of a challenge to the conviction or evidence of mitigation/rehabilitation evidence, or both, including: (a) that one year has passed since release from a correctional institution without subsequent conviction; (b) compliance with the terms and conditions of probation or parole; or (c) any other evidence of mitigation/rehabilitation, including letters of reference.

Employers would need to consider the applicant's response before making a final decision. Notably, while the bill originally would have precluded the employer from disqualifying an applicant who showed evidence of mitigation or rehabilitation, this prohibition was removed by recent amendments. However, if an employer does make a final decision to deny an applicant in whole or in part upon prior conviction history, the employer must notify the employee in writing of the following: (a) the final denial or disqualification; (b) any existing procedure to challenge this decision; (c) whether the applicant is eligible for other positions with the employer; (d) the earliest day the applicant may reapply; and (e) the right to file a complaint with the Department of Fair Employment Housing.

New section 12952 would not apply in the following specifically enumerated exceptions contained in proposed subsection (d): (1) for a position with a state or local agency required to conduct a conviction history background check; (2) for a position with a criminal justice agency, as defined in Penal Code section 13101; (3) for a position as a Farm Labor Contractor (as defined in Labor Code section 1685); and (4) for a position where an employer or agent is required to take an action pursuant to any state, federal or local law that requires criminal background checks for employment purposes or that restricts employment based on criminal history, including the Securities Exchange Act.

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

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

Status: Narrowly passed the Assembly and is pending in the Senate.

Veterans' Hiring Preference for Private Employers (AB 353)

This bill attempts to address the higher-than-normal unemployment rate for returning veterans. Accordingly, new Government Code section 12958 would authorize employers to extend a preference during hiring decisions to veterans. "Veterans" would be defined as any person who served full time in the Armed Forces in time of national emergency or state military emergency or during any expedition of the Armed Forces and was discharged or released under conditions other than dishonorable. Employers would be permitted to require a veteran to submit United States Department of Defense Form 214 to confirm eligibility for this preference. Section 12958 further specifies that such a preference shall be deemed not to violate any state or local equal employment opportunity law, including the FEHA, if used uniformly and not established for purposes of unlawfully discriminating against any group protected by the FEHA.

Government Code section 12940(a)(4) presently provides that using veteran status in favor of Vietnam-era veterans shall not constitute sex discrimination. These bills would broaden this exemption by removing the references to "sex" and to "Vietnam-era veterans," and provide that FEHA's discrimination provisions would not affect an employer's ability to use veteran status as a factor in hiring decisions if the employer maintains a veterans' preference policy in accordance with new section 12958.

A similar bill (AB 1383) unanimously passed the Assembly before stalling in the Senate in 2016, and similar preferences have been enacted in 37 states.

Status: AB 353 unanimously passed the Assembly and is pending in the Senate.

Expanded Protections for Military Service Members (AB 1710)

Military and Veterans Code section 394 presently prohibits any discrimination against an officer, warrant officer or enlisted member of the military or naval forces of the state or the United States because of that membership, including with respect to employment. This bill would expand these prohibitions to include not only the denial of or disqualification from employment, but also the "terms, conditions or privileges" of that service member's employment.

Status: Unanimously passed the Assembly and is pending in the Senate.

Prohibition on Reproductive Health Discrimination (AB 569)

This bill would add Labor Code section 2810.7 to prevent employers from taking any adverse employment action based on the employee's reproductive health care decisions, including the use, timing or method of any drug, device or medical service related to reproductive health by an employee or an employee's dependent. It would also prohibit employers from requiring an employee to sign a code of conduct or similar document that purports to deny any employee the right to make his or her own reproductive health care decisions, including the use of a particular drug, device or medical services. Employers that provide employee handbooks would need to include notice of the employee's rights and remedies under this new section.

This bill appears intended to narrow the narrow the so-called "ministerial" exemption from FEHA for religious organizations, and to be in response to a recent case in which a religious school employee was discharged after she became pregnant although unmarried in violation of her employer's Code of Conduct.

Status: Passed the Assembly and is pending in the Senate.

Rest Period Rules for Emergency Medical Service Providers (AB 263)

This bill would add multiple new Labor Code provisions regarding the rights and working conditions of emergency medical service workers. Specifically, new Labor Code section 226.9 would identify "rest period" rules specific to such emergency medical service workers.

While it would retain the generally applicable rule requiring 10-minute rest breaks for every four hours worked, it would specify that the employer must relinquish control and relieve the employee of all duties except that the employer may require employees to monitor certain devices (e.g., pagers, cellular phones, etc.) during rest and recovery periods to provide for the public health and welfare. It would permit employers to interrupt a rest period and require the employee resume work if either the employer receives an emergency call which requires the emergency vehicle lights and siren to be activated, or an unforeseeable, natural or man-made disaster. If the rest period is interrupted for either of these reasons, the employer shall pay one hour of pay at the regular rate, provide an equivalent rest period as soon as practicable during, and also identify on the itemized wage statement the amount owed for interrupted rest periods.

New Labor Code section 226.10 would include corresponding provisions relating to meal periods, but also specify that its provisions apply regardless of any written agreements for "on duty" meal periods, and further require employers to maintain accurate time records relating to meal periods and interruptions.

Status: Passed the Assembly with some bi-partisan support and is pending in the Senate.

Gender Pay Differential Reporting Requirements (AB 1209)

Reflecting the ongoing legislative focus on gender-related pay differentials, this bill would enact new Labor Code section 2810.7 and impose new reporting obligations on employers that are required to file a statement of information with the Secretary of State and have more than 250 employees.

Specifically, employers would need to collect information relating to both the difference between the median and mean salary of male and female exempt employees, and between male and female board members. Employers would also need to publish this information, including the number of employees used for these determinations, by July 1, 2020 on a publicly available website, and then update and republish it annually by July 1st of the following year. Employers would also need to submit this collected information to the California Secretary of State.

Status: Passed the Assembly and is pending in the Senate. The bill's author suggested she may amend the bill shortly to increase the number of employees needed for an employer to be subject to this bill's provisions.

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

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

Status: Overwhelmingly passed the Assembly and pending in the Senate.

Increased Salary Threshold for Overtime Exemption (AB 1565)

Presently, the salary threshold for being exempt from overtime is $43,680 for employers with 26 or more employees, and $41,600 for employers with 25 or fewer employees, and these levels will increase annually as the recently-enacted five-step minimum wage increase take effect (SB 3). This bill would add new Labor Code section 514.5 to set the overtime exemption salary level at $47,476 annually (or $3,956 monthly), which is the amount proposed in the stayed DOL overtime regulations. This new salary threshold level would govern for overtime purposes until surpassed by the generally applicable formula for overtime purposes in California (i.e., twice the minimum wage for full-time employment), which is currently slated to occur in January 2019 for employers with 26 or more employees, and in January 2020 for employees with 25 or fewer employees.

Notably perhaps, at least for now, AB 1565 does not distinguish on the basis of employer size, so potentially all employers would be immediately subject to the $47,476 threshold level if enacted.

Status: Passed the Assembly despite some bi-partisan opposition and is pending in the Senate.

Gratuities for Gig Economy Employers (AB 1099)

While Labor Code section 351 currently identifies various rules regarding the payment of gratuities to employees, this bill would add new Labor Code section 352 regarding the payment of gratuities by debit card in the so-called "gig economy." While this bill originally targeted specifically-enumerated employers (e.g., hotels, restaurants), it has been amended to apply only to an "entity" that uses an online-enabled application or platform to connect workers with customers to engage the workers to provide labor services, including but not limited to a transportation network company (as defined in

Public Utilities Code section 5431). It would require such entities that permit a patron to pay for services performed by a worker by debit or credit card to also accept a debit or credit card for payment of the gratuity. It would also provide that payment of the gratuity by a patron using a credit card must be made to the worker not later than the next regular payday following the date the patron authorized the credit card payment.

Status: Passed the Assembly on a largely party-line vote and is pending in the Senate.

Payday Rules for Barbers and Cosmetologists (SB 490)

While Labor Code section 204 identifies generally applicable payday rules, this bill would enact new Labor Code section 204.11 to identify rules relating to the payment of commission wages paid to employees licensed under the Barbering and Cosmetology Act. If enacted, commission wages paid to such employees would be due and payable twice during each calendar month on pre-designated paydays. Wages paid to an employee for which the license is required, when paid as a percentage of a flat sum portion of the amount paid to the employer by the client recipient of such services, constitute commissions provided that the employee is paid, in every pay period worked, a regular hourly rate of at least two times the state minimum wage in addition to commissions. The bill further provides that the employer and employee may agree on a commission in addition to the base hourly rate.

Status: Unanimously passed the Senate and is pending in the Assembly.

Expanded Harassment Training for Farm Labor Contractors (SB 295)

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

Status: Passed the Senate with some bi-partisan support and is pending in the Assembly.

Whistleblower Protections for Legislative Employees (AB 403)

Known as the Legislative Employee Whistleblower Protection Act, this bill would prohibit interference with the right of legislative employees to make protected disclosures of ethics violations and would prohibit retaliation against employees who have made such protected disclosures. It would also establish a procedure for legislative employees to report violations of these prohibitions to the Legislature, and would impose civil and criminal liability on an individual violating these protections.

This bill appears very similar to AB 1788 which unanimously passed the Assembly before stalling in the Senate's Appropriations Committee.

Status: Unanimously passed the Assembly and is pending in the Senate's Judiciary Committee.

Illness and Injury Prevention Program Disclosures (AB 978)

The California Occupational Safety and Health Act of 1973 requires every employer to establish and maintain an effective illness and injury prevention program (IIPP). This IIPP must be in writing, except in certain circumstances, and must contain certain statutorily-enumerated items such as identifying the person responsible for the program, a training program, and specification of compliance and reporting methods.

Responding to concerns that many employees, particularly non-English speaking employees, are unaware of an employer's IIPP, this bill would amend Labor Code section 6401.7 and, impose new disclosure requirements regarding these IIPPs. For instance, new subsection (e)(2) would require employers who receive a written request from a current employee or their authorized representative to provide a paper or electronic copy of the IIPP (including all required attachments) within ten business days free of charge.

The employer would be permitted to designate the "authorized representative" to whom such requests should be directed, and to take reasonable steps to verify the identity of a current employee or his or her representative requesting a copy. An "authorized representative" would be defined as an attorney, a health and safety professional, a non-profit organization advocate or an immediate family member if asked for assistance by a current employee and who has been authorized in writing by a current employee to request and receive a copy of the written IIPP. A recognized or certified collective bargaining agent would automatically qualify as an authorized representative for purposes of this disclosure requirement.

If an employee alleges a failure to comply with these disclosure requirements, the employer may assert impossibility of performance provided this impossibility is not caused by or resulting from a legal violation.

Status: Passed the Assembly on a party-line vote and is currently pending in the Senate. A similar bill (AB 2895) stalled in 2016.

Expanded Labor Commissioner Powers (SB 306)

While Labor Code section 98.7 authorizes the Labor Commissioner to investigate discrimination and retaliation claims and order certain relief after an investigation and determination, this bill would authorize the Labor Commissioner to seek immediate temporary injunctive relief during an investigation and before a determination is made. Specifically, upon finding reasonable cause to believe an employer has engaged in or is engaging a violation, the Labor Commissioner would be authorized to petition the superior court for appropriate temporary or preliminary injunctive relief. The court would be authorized to award such relief, and may consider not only the harm resulting directly to an individual, but also the "chilling effect" on other employees asserting their rights in determining whether temporary injunctive relief is appropriate.

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

This bill would also amend section 98.7(c) to provide that if the Labor Commissioner successfully prosecutes an enforcement action, the court "shall" award the Labor Commissioner its reasonable attorney's fees and costs against the employer. This section would also specify that the Labor Commissioner would not need to recover a monetary award to be deemed successful for this purpose, and that it would be deemed successful if the court awards "any relief."

Presently, the Labor Commissioner must enforce a determination through a civil action. However, new Labor Code section 98.74 would enable the Labor Commissioner, if it determines a violation has occurred, to issue a citation to the person responsible for the violation, directing that person to cease the violation and to take actions necessary to remedy the violation, including rehiring or reimbursement of lost wages and posting notices. Employers who willfully refuse to comply with a final order under this section, including failing to reinstate or post notices, would be subject to a civil penalty of $100 per day up to a maximum of $20,000.

Lastly, this bill would amend Labor Code section 1102.5, which authorizes employees to file civil actions related to whistleblowing, to seek temporary or preliminary injunctive relief under proposed new Labor Code section 1102.62. Under this section, the employee could petition for injunctive relief, which the court could order as it deems just and proper.

Status: Passed the Senate on party-line vote and is pending in the Assembly.

Original Contractor Liability for Subcontractor Labor Code Violations (AB 1701)

This bill would enact new Labor Code section 218.7 imposing liability upon direct contractors with construction contracts with the state for any debt owed to a wage claimant incurred by a subcontractor acting at any tier. The direct contractor would be liable for any wage, fringe or other benefit payment or contribution, including interest and state tax payment owed to a wage claimant, and excluding penalties or liquidated damages unless otherwise provided by law. It would also authorize the wage claimant to sue directly or through the Labor Commissioner or district attorney, and would prohibit the direct contractor from attempting to evade this law's requirements.

Status: Passed the Assembly and is pending in the Senate's Labor and Industrial Relations and Judiciary Committees.

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

This bill originally sought to create various exceptions from California's Workers' Compensation system for employees and first responders injured by acts of "terrorism" or "workplace violence." As recently amended, however, it would instead add new Labor Code section 4600.05 to require

employers to provide immediately accessible advocacy services for employees injured in the course of employment by acts of "domestic terrorism," as defined by Title 18 of the United States Code. It also makes clear that it would only apply if the Governor has declared a state of emergency in connection with an act of terrorism and is not intended to alter the conditions for workers compensation compensability.

Status: Unanimously passed the Assembly and is pending in the Senate's Labor and Industrial Relations Committee.

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

While Workers' Compensation's definition of "employee" includes most officers and directors of private corporations, it presently excludes officers and directors of quasi-public or private corporations (as defined) who own at least 15% of the issued stock and sign a sworn written waiver of their status and intent to waive workers' compensation protections. This bill would amend Labor Code section 3352 and expand this exception to such officers or directors who own at least 10% (rather than the current 15%) of outstanding stock and execute a written waiver. It would also expand this exception to owners of certain professional corporations who execute a written waiver of their workers compensation rights and state under penalty of perjury that they are covered by a health insurance policy or health care service plan.

Status: Unanimously passed the Senate and is now pending in the Assembly.

Mandatory Annual Disbursement of Supplemental Right-to-Work Disbursements (AB 553)

Within California's Workers' Compensation system, there is a $120,000,000 fund designed to provide supplemental return-to-work payments intended to compensate those injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. This bill would amend Labor Code section 139.48 to require the Administrative Director to distribute the $120,000,000 annually to eligible workers (as specified) and would require, commencing with the end of the 2017 calendar year, that any remaining program funds available after these supplemental payments are made be distributed pro rata to those eligible workers, subject to a $25,000 limit per calendar year. It would also prohibit any person, including an attorney, from collecting a fee or commission for providing assistance to a worker who applies for benefits under this program.

Status: Passed the Assembly and is pending in the Senate.

Workforce Development Task Force (AB 1111)

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

Status: Passed the Assembly and is pending in the Senate.

Attorneys' Fees for CBA-Related Motions to Compel Arbitration (AB 1017)

Labor Code section 1128 presently provides that in the private employment context, the court shall award attorney's fees to a party to a collective bargaining agreement who prevails on a motion to compel arbitration absent substantial and credible issues presented about whether the dispute was subject to arbitration. This bill would extend this remedy to both public and private employment, but would only permit fee awards against a labor organization or an employer, and would prohibit attorney's fees from being passed onto an employee.

Status: Overwhelmingly passed the Assembly and is pending in the Senate.

Health Facility Whistleblower Protections (AB 1102)

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

Status: Unanimously passed the Assembly and is pending in the Senate.

OSHA Training Requirement for Commercial Cannabis Providers (AB 1700)

This bill would require that applicants for a state license under the Medical Cannabis Regulation and Safety Act or the Control Regulate and Tax Adult use of Marijuana Act of 2016 meet certain OSHA training standards. Specifically, under amended Business and Professions Code section 19322, applicants must certify that they employ, or will employ within one year of receiving a license, an employee who has completed an OSHA 30-hour general industry course based on federal OSHA regulations.

Status: Passed the Assembly and is now pending in the Senate.