

2018 EMPLOYMENT LAW UPDATE



OVERVIEW OF NEW LAWS AFFECTING EMPLOYERS

California has enacted new employment laws for 2018 that significantly alter employer obligations regarding minimum wage, hiring, discrimination and harassment prevention, leaves of absences, and workers' compensation. Businesses and organizations should review these new laws to ensure that they are compliant.

Unless otherwise specified, all of the following laws are effective **January 1, 2018**.

WAGE AND HOUR

Minimum Wage Increase

The minimum wage is increasing again! For California employers, the minimum wage will be \$10.50 per hour for employers with less than 26 employees and \$11.00 per hour for employers with 26 or more employees.

For employers *inside the city of Los Angeles*, the minimum wage will be \$12.00 per hour for employers with less than 26 employees, and \$13.25 per hour for employers with 26 or more employees.

Many cities outside of Los Angeles have also passed higher minimum wage requirements, so if your business is in a city other than Los Angeles, be sure to check your local minimum wage ordinance, or call us to make sure you are in compliance!

Labor Enforcement (SB 306)

Employers are prohibited from retaliating against any employee for complaining about alleged wage and hour violations (i.e., failure to pay overtime, failure to provide

INSIDE THIS ISSUE

WAGE AND HOUR.....	1
HIRING PRACTICES.....	3
DISCRIMINATION AND RETALIATION.....	4
LEAVES OF ABSENCE AND BENEFITS.....	6
WORKERS' COMPENSATION.....	7
MISCELLANEOUS.....	8

SPECIAL POINTS OF INTEREST

- State minimum wage is increasing—make sure your exempt employees earn an annual salary of at least \$45,760 to stay exempt!
- There is now a specific procedure for rescinding job offers to ex-convicts
- Businesses may no longer ask job applicants for prior salary information
- There are new requirements for sexual harassment training!
- California is now a sanctuary state, so there are greater workplace protections for immigrants
- Parental leave has been expanded to include small businesses



meal and rest breaks, etc.). Current law requires an employee to file a complaint with the Labor Commissioner before the Labor Commissioner will commence an investigation. California is amending this law to allow the Labor Commissioner to investigate an employer, even if no complaint has been filed, if the Labor Commissioner suspects the employer of retaliating against an employee during a separate investigation. The Labor Commissioner will have the authority to seek a court order reinstating the employee to his or her prior position, pending resolution of the investigation. The employee will also be able to seek a court order on his or her own to be reinstated to his or her prior position, pending resolution of the investigation.

Remember, California employees are not exempt from overtime unless they earn at least two times the state minimum wage! Make sure your exempt employees are earning at least \$45,760 per year to stay exempt!

Construction Contractors (AB 1701)

Under existing law, any employee may sue for the nonpayment of wages, benefits, or health or pension fund contributions. AB 1701 will make general contractors liable for any unpaid wages, benefits, and/or contributions owed by a subcontractor to a private employee or third party who performs work for the general contractor.

Barbers and Cosmetologists (SB 490)

Employers must pay employees' wages twice each calendar month. SB 490 will require employers to pay percentage or flat-sum commissions earned by employees licensed as a barber or cosmetologist twice each calendar month as well, if the barber or cosmetologist earns at least two times the state minimum wage, including commissions (\$45,760).

Janitorial Workers (AB 1978)

Beginning July 1, 2018, employers that provide janitorial services through contracts, subcontracts, or franchise agreements must register annually with the Labor Commissioner and provide employees with the Department of Fair Employment and Housing's sexual harassment prevention pamphlet. Employers who conduct business without registering with the Labor Commissioner will be

subject to civil fines. Any person or entity that contracts with an unregistered janitorial contractor will also be subject to fines of up to \$10,000 for the first violation, and up to \$25,000 for subsequent violations. Entities that hire or contract with janitorial contractors should check the registry to ensure that they are working with registered employers.

If you would like to order the sexual harassment prevention pamphlet, please contact our office!

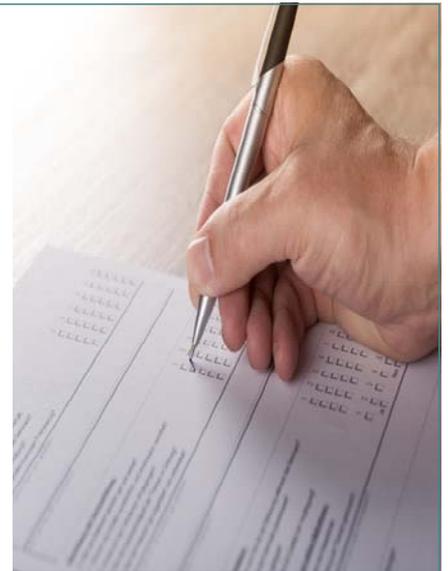
HIRING PRACTICES

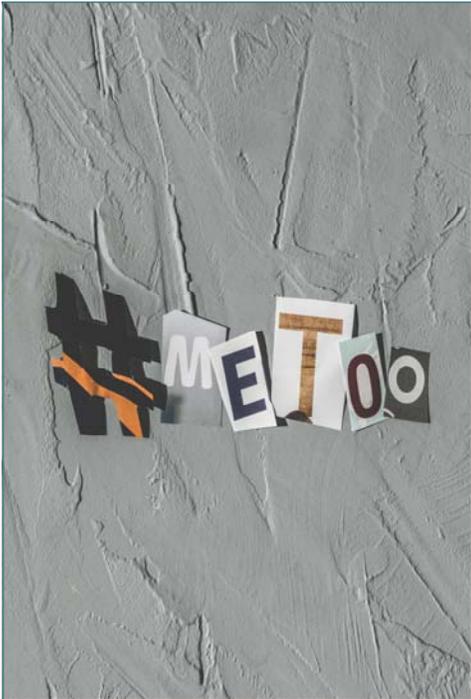
Ban-the-Box (AB 1008)

Employers are currently prohibited from asking job applicants about arrests or detentions that did not result in a conviction. Employers are also currently prohibited from asking applicants about criminal convictions until after they have determined that the applicant meets the minimum job qualifications. AB 1008 repeals the latter provision. Employers with 5 or more employees are no longer permitted to ask job applicants about their criminal convictions, or to consider such convictions, until **after** they have extended a conditional offer to the applicant. If after learning of the applicant's criminal conviction, the employer wishes to rescind the job offer, it must take the following steps:

- (1) Conduct an individualized assessment of the relationship between the applicant's conviction history and job duties
- (2) Provide the applicant with written notification of the intent to rescind the job offer
- (3) Give the applicant 5 business days to respond to the notification
- (4) If the applicant states that he or she would like to dispute the accuracy of the conviction, give the applicant an additional 5 business days to respond
- (5) Consider the information submitted by the applicant
- (6) If the employer still wishes to rescind the job offer, provide the applicant with written notification of its final decision

This law does not apply to any employers who are required to conduct criminal background checks for employment purposes or to restrict employment based on criminal history (schools, hospitals, etc.).





Prior Salary (AB 168)

Employers will no longer be allowed to ask job applicants for their salary history or to use an applicant's salary history as a factor in determining whether to extend a job offer or what salary to offer an applicant. Employers must establish a pay scale for each open position and provide it to the applicant upon request.

DISCRIMINATION AND RETALIATION

New Gender: Nonbinary (SB 179)

California will now recognize three genders—female, male, and nonbinary. Individuals who would like to change the gender listed on their birth certificates, driver's licenses, or state-issued ID cards will no longer need to prove that they have undergone clinical treatment. They can simply submit an application to the State or applicable court with an affidavit. Birth certificates and state-issued ID cards may be changed **beginning September 1, 2018**, while driver's licenses may be changed **beginning January 1, 2019**.

Sexual Harassment Training (SB 396)

California currently requires employers with 50 or more employees to provide 2 hours of sexual harassment training to all supervisory employees within 6 months of their assumption of a supervisory position and every 2 years thereafter. SB 396 will amend this law to require employers with 50 or more employees to include harassment based on gender identity, gender expression, and sexual orientation in their training program. Employers will also need to post a new notice regarding transgender rights. For your convenience, we have attached the new transgender rights notice to the end of this newsletter!

If you need your Employee Handbook updated to reflect this new policy, please contact our office!

Expansion of Fair Pay (AB 46)

Existing law forbids private employers from paying employees of the opposite sex, or of different races and ethnicities, lower wage rates for substantially similar work. AB 46 will expand this law to include public employers.

Immigrant Worker Protection (AB 450)

In furtherance of its new status as a sanctuary state, California passed AB 450, which prohibits employers from allowing immigration enforcement agents to enter nonpublic areas of the workplace without a warrant. Employers are also prohibited from allowing immigration enforcement agents to access, review, or obtain employee records without a Notice of Inspection of Form I-9s (Notice of Inspection), a subpoena, or a court order.

If an employer is served with a Notice of Inspection by an immigration agency, it must post a notice informing all employees of the inspection within 72 hours of receiving the Notice. The posted notice must provide:

- The name of the immigration agency conducting the inspection;
- The date the employer received notice of the inspection;
- The nature of the inspection (to the extent known); and
- A copy of the Notice of Inspection.

Once the inspection has been completed, the employer must *personally* deliver a copy of the inspection results, as well as a written notice of the employer and employee's obligations, to any affected employees within 72 hours of receiving the results. The written notice must contain:

- A description of any and all deficiencies identified in the employee's records;
- The time period for correcting the identified deficiencies;
- The time and date the employee can meet with the employer to correct the identified deficiencies; and
- Notice that the employee has a right to be represented by a lawyer during any meeting scheduled with the employer.

Failure to abide by these provisions may result in penalties of up to \$5,000 for the first violation and \$10,000 for each subsequent violation.

Employers may not reverify the employment eligibility of any employee unless required by federal law. Failure to abide by this provision may result in penalties of up to \$10,000.





LEAVES OF ABSENCE AND BENEFITS

Parental Leave (SB 63)

California currently requires employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid, job-protected leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. SB 63 expands this law. Employers who employ **20 or more employees** within a 75-mile radius will now be required to provide up to 12 weeks of job-protected parental leave to eligible employees so that they may bond with a new child within one year of the child's birth, adoption, or foster care placement.

Employers must guarantee employment in the same or a comparable position upon the employee's return to work on or before the commencement of the leave period. They must also maintain and pay for the health coverage of any employees on parental leave. Employers may not retaliate against an employee for taking parental leave or interfere with, restrain, or deny an employee's right to take parental leave.

Employees are eligible to take parental leave if they have worked for the employer for more than one year and performed at least 1,250 hours of service for the employer within the last year.

Paid Family Leave and State Disability Insurance Benefits (AB 908)

Existing law provides a formula for determining the amount of paid family leave and state disability insurance benefits available to qualifying individuals. AB 908 will revise the formula for determining benefits and increase an employee's paid family leave and state disability insurance benefits from 55% of earnings to either 60% or 70% of earnings, depending on the employee's income. Neither benefit may exceed the maximum weekly workers' compensation benefit amount (\$1,215.27). Employees will no longer need to wait 7 days before becoming eligible to receive paid family leave or state disability insurance benefits.

WORKERS' COMPENSATION

Domestic Terrorism (AB 44)

California requires employers to provide reasonable treatment to employees who sustain injuries during the course of their employment. AB 44 expands this obligation further by requiring employers to provide a nurse case manager to employees who are injured by an act of domestic terrorism. Domestic terrorism is defined as a criminal act that is designed to intimidate or coerce the civilian population, or to affect the policy or conduct of the government through intimidation coercion, mass destruction, assassination, or kidnapping. Employers have no obligation to provide a nurse case manager to injured employees until the Governor declares a state of emergency due to the act of domestic terrorism. Once a state of emergency is declared, the employer must respond to all employee claims for workers' compensation with a notice developed by the Division of Workers' Compensation within three days. The notice has not yet been released.

Employee Coverage (SB 189)

Employers are currently required to provide workers' compensation insurance to all persons, officers, or board members performing services for pay. **Effective July 1, 2018**, SB 189 will amend this law so that employers no longer need to provide workers' compensation insurance to the following individuals:

- Officers or board members of a quasi-public or private corporation who own at least 10% of the company's stock, have health insurance, and sign a written waiver
- Officers or board members of a quasi-public or private corporation who own 1% of the company's stock, have health insurance, sign a written waiver, and have a parent, grandparent, sibling, spouse, or child who owns at least 10% of the company's stock
- General partners of a partnership or managing members of a limited liability company who sign a written waiver
- Owners of a professional corporation who are rendering professional services for the corporation, have health insurance, and sign a written waiver
- Officers or board members of a cooperative corporation who





have health insurance and sign a written waiver.

Employers will, however, need to provide workers' compensation insurance to persons who hold the power to revoke a trust containing shares of a private corporation, or interests of a general partnership or limited liability company, unless such persons sign a written waiver.

Emergency Medical Treatment (SB 489)

Existing law requires healthcare providers to submit bills for employee treatment to the employer within 30 days of the date of service. SB 489 extends this time period from 30 days to 180 days in cases in which the employee receives emergency medical treatment or services.

MISCELLANEOUS

Human Trafficking Notice (AB 260)

California requires the following businesses to post a human trafficking notice developed by the Department of Justice:

- (1) Businesses that hold a license to sell alcoholic beverages on their premises
- (2) Adult businesses that regularly feature live performances in which genitals, buttocks, and/or female breasts are exposed
- (3) Airports that have more than 10,000 passenger boardings each year
- (4) Intercity passenger train stations, including light rail and trams
- (5) Bus stations
- (6) Truck stops that provide food, fuel, shower or other sanitary facilities, and overnight truck parking
- (7) Emergency rooms within acute care hospitals
- (8) Urgent care centers
- (9) Farm labor contractors
- (10) Privately owned job recruitment centers or staffing agencies
- (11) Roadside rest areas
- (12) Businesses that offer massage or bodywork services for compensation

AB 260 expands this law to include hotels, motels, and bed and breakfast inns. These businesses will be required to post the human trafficking notice in clear view of employees and the public, and the notice must be posted in three different languages—English, Spanish, and one other language that is most widely spoken in the county where the business is located. In Los Angeles County, the third most widely spoken language is Chinese. Businesses that fail to comply with the notice requirements will be subject to a civil penalty of \$500 for the first offense and \$1,000 for each subsequent offense.

For your convenience, we have attached the human trafficking notice to the end of this newsletter in English, Spanish, and Chinese!

If you have any questions about these new employment laws, please do not hesitate to call our office!

This pamphlet and the information contained herein have been prepared by Birndorf Law Offices, APC for informational purposes only and is not legal advice. Birndorf Law Offices prepared this pamphlet to provide general helpful information about California employment laws to members of the public in need of an attorney licensed to practice in the State of California. The use of this information, and the sending or receipt of information, does not create an attorney-client relationship between you and Birndorf Law Offices.

DEBORAH BIRNDORF ZEILER

Debbie Birndorf Zeiler has been practicing law for more than twenty years, including ten years at major law firms. She represents employers in all aspects of employment law, including defense of harassment and discrimination claims, wage claims, wage and hour class actions, disability claims, and misappropriation of trade secrets. She also drafts and reviews employment contracts, severance agreements, employee handbooks, and personnel policies and provides counseling.

Debbie earned her B.A. from UCLA, her M.B.A. from NYU, and her law degree from Washington University in St. Louis, where she graduated at the top of her class.

Debbie has been named a **2018 Super Lawyer** in Employment and Labor. She was previously awarded the **Super Lawyer** honor in 2013, 2015, 2016 and 2017. She has also been named one of the **Top Employment and Labor Attorneys** in Los Angeles and one of the **Top Women Attorneys** by *Los Angeles Magazine*. Birndorf Law Offices was recognized by *Los Angeles Magazine* as one of the **Best Law Firms in Los Angeles**.

Super Lawyers

Los Angeles
MAGAZINE

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. Only five percent of the lawyers in California are named to Super Lawyers.

VANESSA LEE

Vanessa recently graduated from USC Gould School of Law. She has helped defend state agencies against wage and hour claims at the California Attorney General's Office and clerked for a superior court judge in San Francisco.

While in law school, Vanessa counseled clients at the Medical-Legal Community Partnership and served on the board of the Health Law Society.

MONICA SMITH

A native of Atlanta, Monica has been Ms. Birndorf's assistant for over eight years.



Contact Us

Birndorf Law Offices, APC

11845 W. Olympic Blvd.
Suite 735W
Los Angeles, CA 90065
T: (310) 914-8400
F: (310) 914-8480
www.birndorflaw.com



@Law4CAEmployers



TRANSGENDER RIGHTS IN THE WORKPLACE

WHAT DOES "TRANSGENDER" MEAN?

Transgender is a term used to describe people whose gender identity differs from the sex they were assigned at birth. Gender expression is defined by the law to mean a "person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." People who identify as transgender are protected by the provisions of California's Fair Employment & Housing Act prohibiting discrimination based on sex, gender, gender identity, and gender expression.

THERE ARE TWO KINDS OF GENDER TRANSITION

- 1 "Social transition" involves a process of socially aligning one's gender with the internal sense of self (e.g. changes in name and pronoun, bathroom facility usage, participation in activities like sports teams).
- 2 "Physical transition" refers to medical treatments an individual may undergo to physically align their body with internal sense of self (e.g. hormone therapies or surgical procedures).

A transgender person does not need to complete any particular step in a gender transition in order to be protected by the law. An employer may not condition its treatment or accommodation of a transitioning employee upon completion of a particular step in a gender transition.

FAQ FOR EMPLOYERS

What is an employer allowed to ask? Employers may ask about an employee's employment history, and may ask for personal references, in addition to other non-discriminatory questions. An interviewer should not ask questions designed to detect a person's sexual orientation or gender identity, including asking about their marital status, spouse's name, or relation of household members to one another. Employers should not ask questions about a person's body or whether they plan to have surgery, because this information is generally protected by the Health Insurance Portability and Accountability Act (HIPAA).

How do employers implement dress codes and grooming standards? California law explicitly prohibits an employer from denying an employee the right to dress in a manner suitable for that employee's gender identity. An employer who requires a dress code must enforce it in a non-discriminatory manner. This

means, for instance, that a transgender woman may not be held to any different standard of dress or grooming than any other woman in the workplace. And, in general, an employer may not impose any dress or grooming standard that is inconsistent with an individual's gender identity or gender expression, unless the employer can establish business necessity.

What are the obligations of employers when it comes to bathrooms, showers, and locker rooms? All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's assigned sex at birth. In addition, where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy, regardless of the underlying reason. Use of a unisex single stall restroom should always be a matter of choice. No employee should be forced to use one either as a matter of policy or due to continuing harassment in a gender-appropriate facility. Under state law, all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency must be identified as all-gender toilet facilities.

FILING A COMPLAINT

If you believe you are a victim of discrimination you may, within one year of the discrimination, file a complaint of discrimination by contacting DFEH.

If you have a disability that prevents you from submitting a written pre-complaint form on-line, by mail, or email, DFEH can assist you by scribing your pre-complaint by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or call us through your VRS at (800) 884-1684 (voice). DFEH is committed to providing access to our materials in an alternative format as a reasonable accommodation for people with disabilities when requested.

To schedule an appointment or to discuss your preferred format to access our materials or webpages, contact the Communication Center at (800) 884-1684 (voice or via relay operator 711) or (800) 700-2320 (TTY) or by email at contact.center@dfeh.ca.gov.

FOR MORE INFORMATION

Department of Fair Employment and Housing
Toll Free: (800) 884-1684 TTY: (800) 700-2320 dfeh.ca.gov

Also find us on:





If you or someone you know is being forced to engage in any activity and cannot leave -- whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity -- call the National Human Trafficking Resource Center at 1-888-373-7888 or the California Coalition to Abolish Slavery and Trafficking (CAST) at 1-888-KEY-2-FRE(EDOM) or 1-888-539-2373 to access help and services.

Victims of slavery and human trafficking are protected under United States and California law.

The hotlines are:

- Available 24 hours a day, 7 days a week.
- Toll-free.
- Operated by nonprofit, nongovernmental organizations.
- Anonymous and confidential.
- Accessible in more than 160 languages.
- Able to provide help, referral to services, training, and general information.



Si a usted, o a alguien que conoce, lo están forzando a hacer algo y no lo dejan ir -- ya sea sexo por dinero, trabajo de casa, campo agrícola, construcción, fábrica, en una tienda minorista o restaurante, o cualquier otra actividad -- llame al Centro Nacional de Recursos para la Trata de Personas (*National Human Trafficking Resource Center*) al 1-888-373-7888 o a la Coalición de California para Abolir la Esclavitud y la Trata de Personas (*California Coalition to Abolish Slavery and Trafficking, CAST*) al 1-888-KEY-2-FRE(EDOM) o 1-888-539-2373 para obtener ayuda y servicios.

Las víctimas de esclavitud y trata de personas están protegidas bajo las leyes de California y los Estados Unidos.

Las líneas de ayuda:

- Están disponibles las 24 del día, 7 días por semana.
- Son gratis.
- Están operadas por organizaciones no de gobierno y sin fines de lucro.
- Son anónimas y confidenciales.
- Prestan servicio en más de 160 idiomas.
- Pueden brindarle ayuda, remisión a servicios, capacitación e información general.



如果您或您認識的人被迫從事任何活動而無法離開 -- 無論是性交易、家務、農事、營建、工廠、零售或是餐廳工作，還是其他任何活動 -- 請致電全國人口販賣資源中心 (National Human Trafficking Resource Center)，電話是1-888-373-7888，或加州廢除奴隸與販運聯盟 (California Coalition to Abolish Slavery and Trafficking, CAST)，電話是1-888-KEY-2-FRE(EDOM) 或1-888-539-2373，以便獲取幫助和服務。

奴隸和人口販賣的受害人受到美國和加州法律保護。

專線電話：

- 一週七天，一天24小時開通。
- 免費電話。
- 由非營利的非政府組織經營。
- 保持匿名和機密。
- 可用160多種語言交談。
- 可以提供幫助、轉介給服務，以及一般資訊。