BIRNDORF
LAW OFFICES, APC

2019 EMPLOYMENT LAW UPDATE

EMPLOYER ALERT

California's minimum wage will increase On January 1, 2019. For small employers (1-25 employees) the minimum wage will increase to $11.00 per hour. And for larger employers (26 or more employees) the minimum wage will increase to $12.00 per hour.

Each city can have its own requirements, so please refer to the chart on the next page for Los Angeles specific information!

Remember, employees in California are not exempt from overtime unless they earn two times the state minimum wage. This means employees must now make at least **$45,760 per year** to qualify as an exempt employee.

Make sure your company is in compliance or you may be liable

OVERVIEW OF NEW LAWS AFFECTING CALIFORNIA EMPLOYERS

This Newsletter details the new laws California has passed in 2019 that alter employer obligations with regard to minimum wage and overtime, harassment prevention, hiring practices, employee benefits, and more.

As you will see later in this Newsletter, in response to the "Me Too" movement, California has enacted a series of laws aimed at the prevention of harassment in the workplace. Most notably, the California legislature now requires that almost all employers provide their staff with mandatory sexual harassment training. Businesses and organizations should review all these new laws to ensure that they are compliant in the upcoming year and beyond.

Unless otherwise specified, all of the following laws are effective **January 1, 2019**.

CHANGES TO WAGE AND HOUR LAWS

Minimum Wage Increase

On January 1, 2019, the state minimum wage increases to $11 per hour for employers with 25 or fewer employees and to $12 per hour for employers with 26 or more employees. This is not a new law — SB 3 was signed in 2016. Please also check your local minimum wage ordinances as they may require a higher minimum wage than the state.

In addition, a few narrow industry wage and hour carve outs were created this year, providing meal and rest break exceptions in limited circumstances and prohibiting Private Attorneys General Act (PAGA) lawsuits for most union construction employees.

THE MINIMUM WAGE REQUIREMENTS

For California employers, the minimum wage is increasing as follows:

Effective Date	Large Employers	Small Employers
January 1, 2019	$12.00	$11.00
January 1, 2020	$13.00	$12.00

For employers ***inside the city of Los Angeles***, the minimum wage is increasing as follows:

Effective Date	Large Employers	Small Employers
July 1, 2018	$13.25	$12.00
July 1, 2019	$14.25	$13.25
July 1, 2020	$15.00	$14.25

Employers have a continuing obligation to notify their employees of the minimum wage increase by posting the Minimum Wage Order (MW-2017) at their worksites.

Providing Employee Payroll Records (SB 1252)

Existing law allows employees to "inspect or copy" their payroll records. SB 1252 makes it clear that upon an employee request it is the duty of the employer to make and provide the copies of payroll records within 21 days of a request.

The law makes clear that employers cannot require employees to make the copies themselves. The actual cost of the reproduction can be charged to the employee. *See* SB 1252(b).

Industry Specific Changes to the Wage and Hour Laws

Construction Worker Employees Exempt from PAGA (AB 1654)

Under AB 1654, construction industry employees will no longer to be able to file a claim against their employer under the Private Attorney General's Act (PAGA) if they have signed a valid collective bargaining agreement (CBA). PAGA allows employees to collect civil fines for violations of the labor code which creates significant liability for CA employers.

In order to qualify, the CBA must include a binding arbitration provision to address potential labor code violations.

Truck Drivers Hauling Commercial Animal Feed (AB 2610)

Under current wage and hour laws, truck drivers must take a meal break during the first five hours of their shift. AB 2610 creates a limited exception for truck drivers hauling commercial feed in remote areas. Now these drivers are no longer required to take a meal break within the first five hours of their shift.

AB 2610 applies only to drivers hauling commercial animal feed to remote rural areas who are paid at least 1.5 times the state minimum wage (at least $34,320 in 2019) and receive overtime compensation. This exception does not apply to a driver's second mandatory meal break before the end of their tenth hour of work.

Petroleum Facility Employees Can Carry Radios on Breaks (AB 2605)

Under current wage and hour laws, employees must be free of all duties while on a rest break, which means if they carry a radio, the radio should be turned off, and the employer cannot require an employee to respond to a radio call while on break.

AB 2605 provides an exception for certain union employees working in safety sensitive positions in petroleum facilities. These employees may now be required to have radios or phones on their person and turned on during rest breaks. Any time their break is interrupted must be made up later.

HIRING PRACTICES

Employers May Now Ask Applicants About Their Salary Expectations (AB 2282)

Last year, AB 168 barred employers from asking applicants about their salary history in the interview process. Now AB 2282 says employers CAN ask about the *salary expectations* of the prospective employee.

Ab 2282 also states that only external applicants are entitled to a pay scale upon request and only after they complete an initial interview. A pay scale must include salary figures or hourly wages.

In addition, compensation decisions based on a current employee's existing salary, such as for giving raises or bonuses, may be permissible if justified by factors such as a seniority or merit system.

Employers May Now Consider Sealed or Expunged Convictions Only Where a Particular Conviction Would Then Prohibit the Applicant from Holding that Position (SB 1412)

Current law generally prohibits employers from considering judicially sealed or expunged convictions when conducting a criminal background check on a job applicant.

However, employers hiring for certain sensitive positions cannot legally hire applicants with specific convictions. SB 1412 narrows the employer's ability to consider sealed or expunged convictions to only those circumstances where a particular conviction would legally prohibit someone from holding that "sensitive position."

A "sensitive position" is one that has a law or regulation preventing an individual from holding that position if they have a certain criminal conviction.

11845 W. Olympic Blvd. | Suite 735W | Los Angeles | CA | 90064 | Phone: 310.914.8400 | Fax: 310.914.8480
www.BirndorfLaw.com

SEXUAL HARASSMENT

This year, many new laws have stemmed from the ñMe Tooò movement, and as a result there are added burdens on California Employers to prevent and monitor harassment in the workplace.

New Rules Regarding FEHA Claims (SB 1300)

This new law prohibits an employer from requiring an employee, in exchange for a raise or bonus or as a condition of employment or continued employment to:

- Agree not to sue or bring a claim against the employer under the FEHA; or
- Sign a non-disparagement agreement preventing the employee from disclosing information about unlawful acts in the workplace, including but not limited to sexual harassment.

These limitations do not apply to negotiated settlement or to severance agreements.

Additionally, SB 1300 expands employer liability for unlawful harassment by nonemployees; for example, harassment of employees by customers, clients or vendors.

The law also prohibits a prevailing defendant from being awarded attorney's fees and costs unless the defendant can prove the employee brought the claim maliciously and without any merit.

Employers are permitted (and encouraged!), but not required to provide bystander intervention training.

While falling short of including changes in the law, the Legislature added a written "declaration of intent" stating that a single act of harassing conduct is sufficient to create a "triable issue of hostile work environment." This lowers the standard of proof for bringing a harassment claim by stating there is no requirement that multiple instances occur to constitute harassment; rather, one act can alone could constitute harassment.

11845 W. Olympic Blvd. | Suite 735W | Los Angeles | CA | 90064 | Phone: 310.914.8400 | Fax: 310.914.8480
www.BirndorfLaw.com

The Legislature further "declared" that the legal standard for sexual harassment should not vary by type of workplace and went so far as to state: "Harassment cases are rarely appropriate for disposition on summary judgment."

Alleged Harassers are Barred from Suing Employers or Accusers for Defamation After Sexual Harassment Allegations (AB 2770)

A positive change for employers is contained in AB 2770. This new law protects employers and sexual harassment victims from liability for defamation in which an alleged harasser might claim injury to his/her reputation. Under this new law:

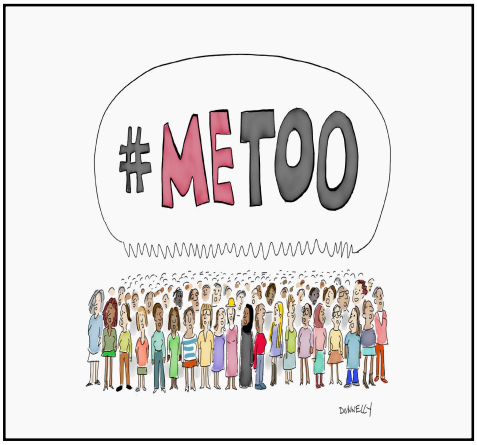
Employees who report harassment, based on credible evidence and without malice, won't be liable for injury to the alleged harasser's reputation;

Communications between the employer and victims/witnesses will be protected and cannot be used for the basis of a defamation claim;

And lastly, employers are now permitted to reveal in a job reference whether the individual is not eligible for rehire because the employer determined that he/she engaged in sexual harassment.

Waiver of Right to Testify Invalid (AB 3109)

AB 3109 invalidates any agreement entered into on or after Jan. 1, 2019 that waives a party's right to testify regarding criminal conduct or sexual harassment of the other party. This applies to testimony in court as well as in an administrative proceeding or testimony made in front of a legislative body.



This new law means that any settlement for an alleged sexual harassment or other criminal conduct cannot prevent the other party from testifying about that event at a future hearing. The law only covers required testimony, such as by subpoena or court order, or in response to a written request in an administrative or legislative hearing.

Harassment Prevention Training Now Required for Companies with as Few as 5 Employees (SB 1343)

Previously, only employers with 50 or more employees had to provide sexual harassment training, but that is no longer the case. This new training law requires employers of five or more employees provide training for both supervisors and non-supervisory employees by January 1, 2020.

By 2020 (within 2019) companies with five or more employees must provide two hours of sexual harassment training to supervisors and one hour to non-supervisorial employees within six months of "assumption of position." And the training must occur at least once every two years.

Temporary and seasonal employees must also be trained. These employees must be trained within their first 30 days of hire, or within their first 100 hours of work, whichever comes first.

Talent Agency Specific Laws (AB 2338)

Talent agencies will now need to provide their adult artists with educational materials on sexual harassment prevention, retaliation, and reporting resources, as well as materials on nutrition and eating disorders. All these materials must be provided within the first 90 days of retention in a language the artist understands.

Also, now before issuing a work permit, agencies must ensure that artists ages 14-17 and their parent or legal guardian complete training in sexual harassment prevention and retaliation.

Agencies must keep records for three years to confirm that education materials have been made available to all artists. Failure to do so could result in a fine of $100 per violation.

11845 W. Olympic Blvd. | Suite 735W | Los Angeles | CA | 90064 | Phone: 310.914.8400 | Fax: 310.914.8480
www.BirndorfLaw.com

Unique Relationships & Sexual Harassment (SB 224)

Current California law imposes liability for sexual harassment that occurs in the course of a business, service or professional relationship where the client or customer cannot easily end the relationship. Examples include doctors, attorneys, bankers and accountants, among others. SB 224 extends the list to elected officials, lobbyists, investors, directors and producers.

In addition, the new law expands liability to anyone who holds himself/herself out as being able to help someone establish a business, service or professional relationship, whether with that individual or with a third party. SB 224 also eliminates the requirement to show that the relationship could not be easily terminated to ensure that responsibility remains with the harassing party regardless of whether the other party could have walked away.

Section 51.9 of the California Civil Code creates sexual harassment liability for individuals involved in a special professional relationship. This means that individuals who hold the title of investor or elected official, or lobbyist, director or producer must be aware that the law now specifically recognizes their profession as one that is prone to these special relationships that could give rise to sexual harassment.

Female Board Member Requirement (SB 826)

By December 31, 2019, all publicly held corporations with executive offices located in CA must have at least one female board director. Corporations may increase their board size in order to comply with the new law.

The first violation of SB 826 will result in a $100,000 fine and a $300,000 fine will be imposed for any further violation.

11845 W. Olympic Blvd. | Suite 735W | Los Angeles | CA | 90064 | Phone: 310.914.8400 | Fax: 310.914.8480
www.BirndorfLaw.com

No ñSecret Settlementsò For Sexual Harassment, Assault or Discrimination Claims (SB 820)

In order to prevent individuals from escaping the consequences of sexual harassment, assault, and discrimination the CA legislature adopted SB 820. Under the new law, non-disclosure settlements, or "secret settlements," are no longer permitted in sexual assault, harassment, or discrimination cases. Only the victim's name and settlement amount may be kept private.

BENEFITS & MISC.

New Lactation Room Requirement (AB 1976)

AB 1976 requires that employers make a reasonable effort to provide a room, ***other than a bathroom***, for lactation purposes. The location must be private and in close proximity to the employee's work area. This law mimics federal law, and now requires employers to create space for private lactation.

There is an exception carved into the law if creating the space would place an undue hardship due to the size, nature, or structure of the business. Under these unique conditions, a lactation space need not be provided.

Expanded Paid Family Leave for Military Families (SB 1123) *Operative January 1, 2021*

Under the current law, employees are able to collect Paid Family Leave benefits if they take time off for "qualifying experiences" when a child, parent, spouse, or registered domestic partner is an active duty military member.

SB 1123 expands the term "Qualified Experiences" to include taking time to prepare for a spouse to leave for active duty, attending military ceremonies or briefings, attending counseling, spending time with the servicemember during rest or recuperation leave, or making arrangements for affected children.

Legislative Housekeeping (AB 2587, SB 1500 & 1501)

The CA legislature made three housekeeping changes to laws in 2019 in order to either bring them up to date or fix past errors. These changes do not create any *new* obligations on employers.

AB 2587 simply erased an outdated reference in a new law. The deleted reference erroneously referred to an outdated seven day waiting period to collect PFL benefits that no longer exists. AB 2587 simply erased that outdated reference.

SB 1500 merely updates the outdated language of an old law but still maintains that employment discrimination on the basis of present, past, or future military service is unlawful.

SB 1501 updates a number of CA codes to use gender fluid vocabulary terms such as “persons” instead of the terms “he” or “she.”

LIABILITY

Direct Contractor Liability (AB 1565)

Last year, CA passed AB 1701 which created liability for contractors when their subcontractors violated the labor code. This year’s clean-up bill, AB 1565, removes a provision placed into the Labor Code by AB 1701 that indicated a direct contractor's liability for unpaid wages or benefits is in addition to any obligations and remedies otherwise provided by law.

It also resolves concerns on withholding disputed payments owed to a subcontractor who has not provided adequate information about its payroll records. A general contractor must provide certainty by including in the terms of the contract which documents the subcontractor will be required to produce prior to withholding payments, and subcontractors must do the same for lower-tiered subcontractors.

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

Joint Liability for Port Trucking Companies (SB 1402)

SB 1402 holds companies party liable when they hire trucking companies that violate the labor code. Under this new law, the Division of Labor Standards Enforcement will create a "blacklist" of port trucking companies that have unpaid judgments for labor code violations.

Companies that employ any "blacklisted" trucking company will share joint civil liability for services obtained after the trucking company appeared on the blacklist.

Retailers and other employers must be sure to constantly check the "blacklist" to ensure they will not be held liable for the violations of their hired trucking company.

WORKERS COMPENSATION

Injury Reporting Records (AB 2334)

Under this new law, the Division of Occupation of Safety and Health can fine employers for failing to keep records of a workplace occurrence for up to five years.

Now, employers must keep records of all injury reports for five years instead of six months. Failure to maintain injury report records for five years will result in a fine.

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

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 in the top of her class.

Debbie has been named a **2019 Super Lawyer** in Employment and Labor. She was previously awarded the **Super Lawyer** honor in 2013, 2015, 2016, 2017 and 2018. 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.

JONATHAN ASSIA

Jonathan graduated Cum Laude from Boston University School of Law in 2018. He is a Los Angeles native who spent his undergraduate career at UCLA studying philosophy. Jonathan recently joined the team at Birndorf Law and has just been admitted to the California Bar.

MONICA SMITH

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

11845 W. Olympic Blvd. | Suite 735W | Los Angeles | CA | 90064 | Phone: 310.914.8400 | Fax: 310.914.8480
www.BirndorfLaw.com