

Minimum Wage

The California minimum wage increased from \$10.50 to \$11.00 per hour for employers with more than 25 employees, and from \$10.00 to \$10.50 per hour for employers with 25 or fewer employees, effective January 1, 2018. An employer must count all active employees in determining which tier of minimum wage applies to its business for each payroll period.

Additionally, certain municipalities have set minimum wage rates above the state minimum, and have imposed increases for 2018, including Los Angeles (from \$12.00 to \$13.25, for employers with more than 25 employees, and from \$10.50 to \$12.00, for employers with 25 or fewer employees, effective July 1, 2018), San Francisco (from \$14.00 to \$15.00, effective July 1, 2018), and San Jose (from \$12.00 to \$13.50, effective January 1, 2018).

These increases in the state minimum wage also result in an increase in the minimum salary required for employees treated as exempt under the administrative, executive, and professional exemptions, who must be paid a salary of at least twice the minimum wage, or \$45,760 annually, for employers with more than 25 employees, or \$43,680 annually for employers with 25 or fewer employees.

CA Paid Sick Leave

Effective July 1, 2018, the provisions of California's paid sick leave law, the Healthy Workplaces, Healthy Families Act of 2014, will apply to individuals who work as in-home supportive services providers under the state program that provides in-home assistance as an alternative to out-of-home care. These individuals will accrue paid sick days at the same rate as is generally provided under the Act.

Ban the Box

California's new "Ban the Box" law prohibits employers with five or more employees from asking about an applicant's conviction history until after a conditional offer of employment has been made. Also, if the applicant has a conviction history and the employer wants to rescind its offer based solely, or in part, on that history, the law contains detailed provisions regarding the process the employer must undertake. There are certain exceptions for positions where the employer is required by law

Ban the Box (cont'd)

to conduct criminal background checks or restrict employment based on criminal history. Some cities in California, including Los Angeles and San Francisco, have adopted their own "Ban the Box" ordinances with varying requirements.

Salary History Inquiry Prohibited

All employers in California (regardless of size) are prohibited from relying on an applicant's salary history as a factor in determining (1) whether to offer employment or (2) what salary to offer. The law also prohibits written and oral inquiries into salary history, regardless of whether the inquiry is made by the employer directly or through an agent. However, if the applicant voluntarily discloses his or her salary history, the employer can consider that information in determining what salary to offer. Further, employers must provide a pay scale for the position sought to the applicant upon reasonable request.

Parental Leave

Employers with 20 or more employees are now required to provide employees with job-protected parental leave. Specifically, within one year of the birth, adoption or foster care placement of a child, an employer shall provide to any employee who has at least 12 months of service and worked 1,250 hours in the previous 12 months, a 12-week parental leave.

Sex Harassment Training

Employers with 50 or more employees are now required to include in their sexual harassment training, training regarding harassment on the basis of gender identity, gender expression, and sexual orientation. Additionally, this new law expands the definition of an "individual with employment barriers" to include transgender and gender non-conforming individuals, and requires that employers post a poster identifying transgender rights.

Human Trafficking

Hotels, motels, and bed and breakfast inns have now been brought into the ambit of Civil Code Section 52.6, which requires that specific businesses post notices regarding slavery and human trafficking.

Deductibility of Settlements of Sexual Harassment Claims

In its recent tax reform bill, the Tax Cuts and Jobs Act, Congress included a provision disallowing tax deductions for amounts spent on "any settlement or payments related to sexual harassment or sexual abuse," or for "attorney's fees related to such a settlement or payment," if the settlement or payment is subject to a nondisclosure agreement. This provision became effective on December 22, 2017, the date the tax reform bill was signed into law. There is no guidance as to how this new provision applies when additional claims are asserted with a sexual harassment claim or whether it covers all attorney's fees incurred in defending a claim pre-settlement.

Sanctuary State

In an effort to create a "sanctuary state," employers are now prohibited from providing an immigration enforcement agent voluntary consent to inspect the workplace and/or access employee records (including I-9s). An employer must also provide all current employees notice within 72 hours of receiving a Notice of Inspection of I-9 Employment Eligibility Verification Form or other employee records.

Expanded Retaliation Protections

The new law authorizes the Labor Commissioner to initiate an investigation of any employer, with or without a complaint being filed, if retaliation or discrimination is suspected during the course of another investigation being conducted. In addition, the law provides additional authority to the Commissioner to seek injunctive relief and issue citations. Finally, the law provides for a new process to seek injunctive relief in actions brought under Labor Code Section 1102.5.

This summary is not intended to be legal advice or relied upon as such. Please call your Kading Briggs employment counsel to discuss additional details about these laws and how they may impact your business.