



New rights for employees and requirements for employers in 2016

A summary of the most significant and some of the more interesting laws that will impact employees and their employers

BY AMANDA L. RIDDLE
AND JENNIFER E. MCGUIRE

The new year brings with it several new employment laws. California continues to lead the country in rights and benefits for employees, requiring equal pay for equal work, expanding leave rights, and increasing safeguards for employees within protected classes. Here are a few of the significant laws that will impact employees and employers starting this year:

California Fair Pay Act

(SB 358; Labor Code § 1197.5)

California now has one of the toughest equal pay laws in the country. In 2014, a woman working full-time year-round earned an average of 84 cents to every dollar that a man earned. This gap

increased for women of color. The California Fair Pay Act requires that women be paid equally for work that is substantially similar to the work of their male colleagues, unless the wage difference is based on: (1) seniority; (2) merit; (3) a system that measures earnings by quantity or quality of production; or, (4) a bona fide factor other than sex, such as education, training or experience.

A female employee shall not face retaliation if she discusses or asks how much her male colleagues are paid. The new law requires that every employer maintains records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer. All of the records shall be kept on file for a period of three years. Employers who violate this law may be

liable for the balance of the wages, with interest, and an equal amount as liquidated damages, attorney's fees, and litigation costs.

The Affordable Care Act

(26 U.S. Code § 4980H, 5000A(f)(2))

Beginning in 2016, businesses that employ 50 or more full-time equivalent employees will have to offer health insurance coverage, meeting certain criteria, to all full-time employees.

• **Definition of full-time equivalent:** Under the applicable legislation, a "full-time employee" is defined as one who works an average of 30 hours per week, or at least 130 hours per month. A business' number of "full-time-equivalent employees" is determined by adding together the hours of full-time and part-time employees. For instance, if an



employer has four employees who work 15 hours per week, he has two full-time equivalent employees.

- **Requirements of coverage:** The coverage must be both affordable and provide a minimum value. Coverage is considered affordable if it costs no more than 9.5 percent of the employee's household income. The health plan offered to employees meets the minimum value requirement if it pays for at least 60 percent of covered services.

- **Penalties:** If an employer does not offer health coverage, the annual penalty is \$2,000 per full-time employee, excluding the first 30 employees. An employer that offers coverage that does not meet the requirements described above, faces an annual penalty of \$3,000 for each full-time employee who qualifies for reduced premiums under Covered California.

Expansion of the Family School Partnership Act & Kin Care Law

(SB 579; Labor Code §§ 230.8, 233)

An employer who employs 25 or more employees working at the same location shall not discharge or in any way discriminate against an employee who is a "parent" (which term is expanded to include guardians, stepparents, foster parents, or grandparents of, or persons who stand in loco parentis to, a child) of one or more children of the age to attend kindergarten or grades 1 to 12, or a licensed child-care provider, for taking off up to 40 hours each year, for the purpose of either of the following child-related activities: (1) to enroll or reenroll their child in school or with a child-care provider; or (2) to address a provider or school emergency. The law generally requires the employee to use existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section. An employee also may take time off without pay for this purpose to the extent permitted by the employer. An employer is permitted to request verifying documentation from the school or child-care provider.

Senate Bill 579 also amends California's Kin Care law to more closely reflect the protections provided under California's paid sick leave law, expanding the term parent to include those persons listed above. The new law also expands the use of kin-care leave to include not only illness but also preventive care.

A request for a reasonable accommodation is a protected activity

(AB 987; Government Code § 12940)

AB 987 amends California's Fair Employment and Housing Act ("FEHA"), to state that a request for reasonable accommodation based on religion or disability constitutes protected activity. An employer may not retaliate against any employee making such a request.

Prohibition of discrimination based on immigration status

(SB 600; Civil Code § 51)

California's Unruh Civil Rights Act provides that all persons within California are entitled to full and equal accommodations in all business establishments regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation. SB 600 expands these categories to include citizenship, primary language, and immigration status. Those protections do not require the provision of services or documents in a language other than English, beyond that which is otherwise required by law.

Piece-Rate compensation requirements

(AB 1513; Labor Code § 226.2)

AB 1513 requires employers to pay piece-rate employees a separate hourly wage for "nonproductive" time worked as well as separate payment for rest and recovery periods. Hours and pay rates relating to "nonproductive" time and rest and recovery periods must be separately itemized on the employees' paystubs.

Professional sports cheerleaders

(AB 202; Labor Code § 2754)

Any "cheerleader" used by a California-based professional sports team is deemed to be an employee and must be classified as an employee, no matter whether hired directly or indirectly, for all purposes concerning California law governing employment, including the Labor Code, Unemployment Insurance Code, and FEHA.

Minimum Wage increases

Effective January 1, 2016, the minimum wage is \$10 per hour for almost all employees in California. In addition, certain cities, such as San Francisco, San Jose, and Oakland have higher minimum wages increasing in 2016. San Francisco's current hourly minimum wage of \$12.25 is scheduled to rise to \$13 on July 1, 2016, \$14 on July 1, 2017, and reach \$15 on July 1, 2018. On January 1, 2016, San Jose's hourly minimum wage rose to \$10.30, and Oakland's minimum wage increased to \$12.55.

Amanda L. Riddle is a partner and Jennifer E. McGuire is an associate with the law firm of Corey, Luzaich, de Ghetaldi, Nastari & Riddle LLP.

They practice in the areas of general and complex civil litigation, serving clients in single plaintiff employment litigation and class actions. They also provide employment counseling services to employees and small businesses. Ms. Riddle is a former president of the San Mateo County Trial Lawyers Association, and the San Mateo County Bar Women Lawyers and Barristers Sections and Ms. McGuire currently serves on the board of all three organizations. Ms. Riddle served as co-liaison counsel for plaintiffs in the PG&E San Bruno Explosion Cases.



Riddle



McGuire