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Employers: Are you ready for new California HR laws in 2022?

Even while the COVID-19 pandemic rages throughout the state and the world, the California legislature has been busy throughout 2021 enacting a bevy of new employment laws. Here are five things to look out for in 2022.

Settlement, Non-Disparagement and Severance Agreements

SB 331, the "Silenced No More Act," amends existing California law which restricts the use of confidentiality and non-disparagement provisions in employment agreements, including settlement and severance agreements. Previously, California law provided that any settlement agreement in cases where sexual harassment, sexual assault or discrimination based on sex had been alleged could not include a confidentiality clause prohibiting disclosure of *factual information* regarding these claims. Under the new law, this prohibition is expanded to include acts of workplace harassment or discrimination based on any of the characteristics protected under the Fair Employment and Housing Act (FEHA), not just based on sex. Employers still may use clauses prohibiting disclosure of the settlement *amount*, however.

In addition, SB 331 also prohibits employers from requiring an employee to sign a release or non-disparagement agreement "denying the employee the right to disclose information about unlawful acts in the workplace" in exchange "for a raise or bonus or as a condition of employment or continued employment." Non-disparagement provisions still will be permitted, but only if they contain a disclaimer with the following or substantially similar language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

Last but not least, SB 331 also requires employers offering severance agreements to "notify the employee that the employee has a right to consult an attorney regarding the agreement and shall provide the employee with a reasonable time period of not less than five business days in which to do so." The employee may sign the severance agreement prior to the end of the five-day period, but only if the employee's decision to do so "is knowing and voluntary and is not induced by the employer through fraud, misrepresentations or a threat to withdraw or alter the offer prior to the expiration of the reasonable time period."

California Family Rights Act (CFRA)

AB 1033 clarifies that employees can take family and medical leave to care for a parent-in-law with a serious medical condition. The bill, which will go into effect on January 1, also revises some procedural aspects of the Department of Fair Employment and Housing's pilot mediation program for resolving family leave disputes between employees and small employers (i.e., 5-19 employees), including making participation in the mediation program a prerequisite for an employee to bring a civil action.

Cal/OSHA Safety and Wage Enforcement and Penalties Increased

SB 606 greatly increases Cal/OSHA's enforcement powers by creating two new violations categories – "enterprise wide" and "egregious" violations. The bill creates a rebuttable presumption that an employer with multiple worksites commits an "enterprise wide" violation if it has a written policy or procedure which violates certain safety rules or there is evidence of a pattern or practice of the same violation(s) committed by the employer and which involve more than one of the employer's worksites. Enterprise-wide violations will carry penalties up to $134,334 per violation.

The bill also creates an "egregious violation" category for willful and egregious violations of an occupational safety or health standard, order, special order or regulation based on several factors set forth in the statute. Each instance of an egregious violation will be considered a separate violation with respect to fines and penalties.

Warehouse Distribution Centers

AB 701 provides that certain large warehouse distribution centers, i.e., those with 100 or more employees at a single facility or 1,000 or more employees at one or more warehouse distribution centers in California, and who meet industry definitions for General Warehousing and Storage, Merchant Wholesalers (Durable and Non-Durable Goods), and Electronic Shopping and Mail-Order Houses, must provide each non-exempt employee working at a warehouse distribution center with a written description of each quota to which they are subject, including tasks to be performed, materials produced or handled, time periods and any potential adverse employment actions that may result from failure to meet quotas.

Employees may not be required to meet quotas that prevent compliant meal and rest breaks, use of bathroom facilities, or health and safety laws. The new law also creates a rebuttable presumption of retaliation if an employer takes adverse action against an employee within 90 days of the employee's request for their quota and personal work speed performance or an employee's complaint about a quota.

Garment Industry

SB 62 requires garment manufacturers and "brand guarantors" who contract with another person for the performance of garment manufacturing to be jointly and severally liable with manufacturers or contractors for wage violations of employees.

The new law also prohibits the practice of piece-rate compensation for garment manufacturing, except in cases of worksites covered by a valid collective bargaining agreement.

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