THE LONG LAW GROUP PC

Did You Know?
New California Employment Laws Taking Effect on January 1, 2018

by Randy A. Lopez

This year is coming to an end rapidly. Just as rapid are the changes in employment law. That is why we want to let you know of some of the new laws taking effect January 1, 2018. Some of these laws require updating of employee handbooks, employment applications, and company policies/procedures. We are available and look forward to the opportunity to work with you and your Company to assist in navigating California's changing employment law landscape.

"Ban the Box"

AB 1008 is a continuation to the "Ban the Box" law enacted in July 2017. It prohibits the use of criminal history in hiring decisions and for an employer to rely solely on a conviction history to deny employment. The new law states that it is unlawful under California Fair Employment and Housing Act ("FEHA") for an employer with **5 or more** employees to:

- Have any questions on employment applications that ask for the disclosure of an applicant's conviction history;
- Inquire into or consider an applicant's conviction history until the applicant has received a conditional offer of employment; or
- Consider, distribute, or disseminate information related to specified prior arrests, diversions, or convictions if a conviction history background check is performed.

The law also requires an employer who denies employment because of an applicant's conviction history to make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job. This assessment calls for the employer to consider all of the following:

- The nature and gravity of the offense or conduct.
- The time that has passed since the offense or conduct and completion of the sentence.
- The nature of the job held or sought.

If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing (and said writing includes requirements that must be followed to avoid violating this law). After written notification, the applicant will have 5 days to respond to the preliminary notice. If the employee is trying to obtain additional evidence to dispute the accuracy of the conviction history, the employee shall have an additional 5 days. Upon making a final decision, the employer shall notify the applicant in writing.

A violation of this law provides an aggrieved applicant the right to sue a potential employer. The range of damages, under FEHA, includes compensatory damages, attorney's fees, and costs.

(AB 1008)

Inquiries of Salary History

All employers are prohibited from relying/using the salary history of an employment applicant to determine whether to make an offer of employment or what salary to offer. As a result, the law prohibits an employer from seeking, inquiring or questioning an applicant about her/his salary history. The purpose of this law is to reduce and eliminate wage inequality between men and women. This new law will require employers to review and revise applications. The law further requires, upon request by the applicant, for an employer to provide a "pay scale" for a position.

If, without being prompted, an applicant volunteers such salary information, an employer can consider, use or rely on that "volunteered" information in determining the salary for the applicant. This only applies if the information was offered "without being prompted" by an employer.

(AB 168)

Harassment Training Expanded

California FEHA currently requires employers with **50 or more** employees to provide training/education regarding sexual harassment to all supervisory employees. The new law requires that the training/education now address harassment based on gender identity, gender expression, and sexual orientation. The training and education is required, as the current law states, to all supervisory employees within 6 months of assuming their supervisor position and must be conducted once every 2 years.

Employers are also required to post a poster – developed by California FEHA – regarding transgender rights.

(SB 396)

New Parental Leave Act

The New Parental Leave Act expands the California Family Rights Act ("CFRA"). The new law now requires employers with **20-49** employees (previously this only applied to employers with 50 or more employees) to provide 12 weeks of baby bonding leave to eligible employees. The 12 weeks would be unpaid but job-protected and must be taken within 1 year of the child's birth, adoption, or foster care placement.

The law applies to the following employees who:

- Have at least 12 months of service with the employer;
- Worked at least 1,250 hours of service with the employer during the previous 12-month period;
- Work at a site wherein the employer employs at least 20 employees within a 75 miles radius.

As part of the new law (like CFRA), employers must maintain and pay for coverage under a group health plan for an employee who takes leave – same terms and conditions as employees currently working.

The law authorizes the California Department of Fair Employment and Housing ("DFEH") to implement a mediation pilot program allowing for employers who receive a right-to-sue notice – claiming violation of this law – to request all parties to participate in DFEH's Mediation Program. Exercise of this option must be done within 60 days of receipt of the right-to-sue notice. If an employer timely elects for the parties to participate in the Mediation Program, the employee is prohibited from pursuing a civil lawsuit until the mediation is complete (tolling of statute of limitations applies).

(SB 63)

Immigration Worksite Raid Protection

With the uncertainty of immigration policy and enforcement at federal level, California passed a law to protect the rights of all workers (immigrant or not) and their employers. The new law prohibits employers from:

- Allowing immigration enforcement agents to enter any non-public areas of a workplace without a judicial warrant;
- Allowing immigration enforcement agents to access, review, or obtain an employer's employee records without subpoena or judicial warrant; and
- Unless otherwise required by federal law, from reverifying employment eligibility of a current employee at a time or manner not required by federal law.

However, exceptions to the above prohibitions do exist and it is the employer's responsibility to be aware of and inform their management/staff. The law also imposes notification requirements on the employer as follows:

- Within 72 hours of receiving a Notice of Inspection ("NOI"), the employer is to notify current employees and any authorized employee representatives, if any, of any immigration agency inspection of I-9 Employment Eligibility Verification forms or other employment records.
- Within 72 hours of receiving the results of the inspection, an employer must provide each current "affected employee" and their representative, if any, the results of the inspection and details of any obligations imposed.

The potential penalties include $2,000 to $5,000 for the first violation and $5,000 to $10,000 for each subsequent violation.

(AB 450)

"Whistleblower" and Retaliation Protection

The current law allows the Labor Commissioner's office to investigate an employer for unlawful discharge and discrimination *when* an employee files a complaint. The new law allows for the Commissioner's office to initiate an investigation of an employer *with or without* a complaint when the Commissioner's office *suspects* that:

- Retaliation occurs during the course of adjudicating a wage claim,
- During a field inspection, or
- In instances of suspected unlawful immigration-related threats.

The Labor Commissioner also has the authority to immediately petition a court for relief – including injunctive relief – while the investigation is being conducted, before completion of the investigation or before concluding that retaliation occurred. With this law, the burden of proof for injunctive relief has been greatly reduced to a finding of "reasonable cause" that the law was violated rather than the current requirement of showing irreparable harm if the relief is not granted, likelihood of success of claim, and that interests outweigh any harm defendant may suffer from granting relief. This may result in an employer having to restore an employee to his/her position for significant periods of time until a claim is litigated.

The new law also provides the Labor Commissioner with the authority to issue citations to an employer with direct remedial and/or action requirements. It is then up to the employer to challenge a citation.

(SB 306)

THE LONG LAW GROUP PC

The Long Law Group, PC is a woman and minority-owned firm in Pasadena. Our practice areas include:

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- Mergers & Acquisitions
- Labor & Employment
- Business Litigation
- Securities Litigation

Our firm takes a tactful yet practical approach to dealing with the variety of issues that clients face. We seek to handle each matter as though we are representing ourselves. We offer legal advice tailored to each client's unique needs. Viewing business issues from our client's perspective, we form a collaborative relationship to develop a strategy with a business focus that produces the best possible outcome.

We provide customized legal solutions to professionals and businesses of all sizes, from sole proprietors to startups to middle-market companies. We offer big firm experience coupled with the affordability and efficiency of a smaller firm, without compromising the quality that clients expect.

Our attorneys are true advocates. We learn our clients' businesses so that we may give relevant advice that preserves and advances their business goals. And we do so while advocating both zealously and ethically on our clients' behalf.

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