

CLIENT NEWS BRIEF

Labor and Employment Legislative Update, Part Two

Governor Jerry Brown considered several bills this legislative season that will affect the rights of public employees and their employers. In this second part of a two-part series, Lozano Smith summarizes seven new laws with the greatest potential impact on public employers in 2017.

Assembly Bill (AB) 2248: Expedited Authorizations for Out-of-State Teachers with Bilingual Authorization

AB 2248 seeks to address California's teacher shortage and expedite the ability of schools to place qualified bilingual teachers (i.e., teachers authorized to deliver content instruction in a pupils primary language) in California classrooms. Under existing law, teachers who hold an out-of-state credential authorizing instruction of English learners are allowed to earn an English learner authorization to teach in California. However, current law does not extend that authorization to out-of-state bilingual teachers. Instead, out-of-state bilingual teachers must take professional tests and coursework to obtain a bilingual authorization in California regardless of their qualifications. AB 2248 amends Education Code section 44253.4 so that a teacher who holds an out-of-state bilingual authorization can earn an equivalent bilingual learner authorization in California by simply submitting an application and a fee.

Senate Bill (SB) 1001: New Prohibitions on Employer Review of Employment Authorization Documents

On September 28, 2016, Governor Jerry Brown signed SB 1001 into law. SB 1001 adds section 1019.1 to the Labor Code, which will prohibit employers from engaging in certain practices when reviewing employment authorization documents in order to verify, as required by federal law, whether an individual is authorized to work in the United States. Pursuant to SB 1001, an employer is prohibited from: (1) requesting more or different work authorization documents than are required under federal law; (2) refusing to honor documents that on their face reasonably appear to be genuine; (3) refusing to honor documents or work authorization based upon the specific status that accompanies the authorization to work; and (4) attempting to re-investigate or re-verify an incumbent employee's authorization to work using an unfair immigration-related practice. The new code section also provides for sanctions against employers who violate its provisions, including monetary penalties imposed by the state Labor Commissioner of up to \$10,000 per violation. In addition, job applicants and employees can bring a complaint with the Division of Labor Standards Enforcement to address violations of this new law. Employers should be mindful of these new prohibitions when reviewing employment authorization records to ensure compliance with the law.

SB 1180: Additional Leave Rights for Military Veterans

On September 28, 2016, Governor Brown signed SB 1180 into law. The bill, which adds sections 44978.2 and 45191.5 to the Education Code, is intended to provide disabled veterans who are new school employees with additional leave

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benefits during their first year of employment. Pursuant to SB 1180, certificated and classified employees hired on or after January 1, 2017 who are military veterans with a military service-connected disability rated at 30 percent or more by the U.S. Department of Veterans Affairs are entitled to a leave of absence for illness or injury with pay of up to 10 days (certificated) or 12 days (classified) during their first year of employment for the purpose of undergoing medical treatment for their military service-connected disability. This new leave is in addition to other leave already provided by existing law.

AB 1676 and SB 1063: Amendments to California's Fair Pay Act

Existing law prohibits an employer from paying any employee "at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." Willfully doing so is a misdemeanor punishable by a fine of up to \$10,000 and/or six months imprisonment. (Lab. Code, §§ 1197.5, 1199.5.) The law contains specific exceptions, including where the pay differential is based on (1) a seniority system, (2) a merit system, (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. These factors must be reasonably applied and account for the entire wage differential. (Lab. Code, § 1197.5.)

AB 1676 amends Labor Code section 1197.5 to provide that an employee's "prior salary," by itself, is not sufficient to justify any disparity in compensation. That is, an employer who relies solely on the employee's prior salary to explain a pay differential will not qualify for the "bona fide" factor exception.

SB 1063 amends Labor Code sections 1197.5 and 1199.5 so that in addition to pay differentials based on sex, employers are prohibited from paying employees "at wage rates less than the rates paid to employees of another race or ethnicity." Willfully paying employees less based on race and ethnicity is a misdemeanor. Local agencies and school districts are not entitled to reimbursement from the state for any costs they may incur as a result of SB 1063.

AB 1843: Juvenile Record Off Limits in Employment Decisions

With some exceptions, under existing law set forth in Labor Code section 432.7, when making employment decisions, an employer cannot inquire about or consider information concerning an arrest or detention that did not result in a conviction, a referral to or participation in any pretrial or post-trial diversion program or a conviction that has been judicially dismissed or ordered sealed. AB 1843 amends Labor Code section 432.7 to prohibit employers from asking a job applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. In addition, the definition of "conviction" in Labor Code section 432.7 will expressly exclude any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court law.

AB 2028: Reinstatement of PERS Benefits

AB 2028 adds section 20969.3 to the Government Code and applies it to all active Public Employees' Retirement System (PERS) school and local agency members. Pursuant to AB 2028, a member who is involuntarily terminated on or after January 1, 2017 and is later reinstated to that employment pursuant to an administrative, arbitral or judicial proceeding – including proceedings before school boards – is entitled to reinstatement with all retirement benefits that the member otherwise would have accrued. In addition, PERS contributions must be made, and service credit given, for any period for which salary is awarded in the proceeding. The reinstatement of benefits is effective

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as of the date from which salary is awarded. Employers are required to notify PERS of the final decision ordering the member's reinstatement within five days of the date the decision becomes final.

For more information on these new laws, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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