HUNTON& WILLIAMS

Ten Recent Developments in California Employment Law

1. Healthy Workplaces, Healthy Families Act of 2014 - AB 1522 (Sept. 10, 2014)

Requires most employers to provide at least 24 hours/3 days of paid sick leave per year to employees. The law covers all employees who work 30 or more days within a year from commencement of employment, and employees can begin using their paid sick leave after 90 days of employment. Employees who use or attempt to use paid sick leave are protected from adverse employment action. Unused sick leave does not have to be "paid out" at termination of employment. The law also adds recordkeeping and notice requirements for employers. It goes into effect on July 1, 2015.

2. The "Joint Employer Law" - AB 1897 (Sept. 28, 2014)

Provides that companies using contract or temporary workers may share liability with the labor contractor for payment of wages and failure to secure worker's compensation coverage. The law does not apply to smaller employers (fewer than 25 workers) or those who use five or fewer temporary workers at any given time. Indemnification agreements with the labor contractor against liabilities arising from the statute are permitted.

3. Anti-Bullying Training - AB 2053 (Sept. 9, 2014)

Requires employers to add training on "prevention of abusive conduct" to the already mandatory training and education regarding sexual harassment that is required to be provided to all supervisory employees once every two years. "Abusive conduct" means conduct with malice in the workplace that a reasonable person would find hostile, offensive and unrelated to the employer's legitimate business interests. It includes repeated infliction of verbal abuse such as the use of derogatory remarks, insults and epithets; verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating; and the gratuitous sabotage or undermining of a person's work performance, but a single act does not constitute abusive conduct unless it is especially severe and egregious.

4. Statewide Minimum Wage Hikes

The minimum wage for California workers increased to $9/hour on July 1, 2014, and is scheduled to go up to $10/hour on January 1, 2016. In some cities, minimum wage is already higher than the statewide minimum (San Francisco is currently $10.74/hour, San Jose is $10.15/hour) and future increases are either approved (Berkeley to $12.53/hour by 2016, Richmond to $12.30/hour by 2017, San Diego to $11.50/hour by 2017, Los Angeles to $15.37/hour for hotel workers by 2016) or pending approval (Eureka to vote in November on $12/hour; San Francisco to vote in November on $12.25/hour by May 1, 2015, rising to $15/hour by July 2018; Los Angeles mayor proposing plan for $13.25 by 2017). Employers should review their exempt positions to ensure they still meet the minimum salary requirement. Exempt employees generally must be paid no less than two times the state minimum wage for full-time employment.

5. Intern Antidiscrimination Law - AB 1443 (Sept. 9, 2014)

Extends the state's antiharassment and antidiscrimination protections to unpaid interns and makes employers liable for sexual harassment of unpaid interns by nonemployees if the employer knew or should have known of the conduct but failed to promptly take appropriate corrective action.

6. Publication of Arbitration Information - AB 802 (Sept. 30, 2014)

Beginning January 2015, major arbitration providers must publish at least quarterly on their websites detailed information concerning arbitrations they have handled, including (1) the name of any employer involved in the arbitration; (2) the nature of the dispute; (3) whether the employer was the initiating or responding party; (4) the annual wage (in a range) earned by the involved employee; (5) the amount of the claim, which party prevailed and the amount of any award, including lawyers' fees; (6) whether the employee was represented by a lawyer and, if so, the name of the lawyer and the law firm; (7) the name of the arbitrator and the amount of the arbitrator's fees; and (8) the total number of times the employer previously has been a party in arbitration or mediation before the dispute resolution provider.

7. Reimbursement of Cell Phone Expenses

In *Cochran v. Schwan's Home Service, Inc.* (Cal. Ct. App., Aug. 12, 2014) the California Court of Appeals held that employers must reimburse employees who are required to use their personal cell phone for work-related purposes. The reimbursement requirement applies regardless of whether the employee is incurring an additional expense, i.e., using minutes on an unlimited cell phone plan. The employer must reimburse a "reasonable" percentage of the cell phone bill.

8. Franchisor Liability Under Discrimination Laws

In *Patterson v. Domino's Pizza, LLC* (Cal. Sup. Ct., Aug. 28, 2014), the California Supreme Court held that a franchisor that imposes uniform marketing and operational plans upon franchisees does not automatically create vicarious liability for the franchisor for discriminatory acts of the franchisee. Rather, such liability arises only when the franchisor retains or assumes a general right of control over factors such as hiring, direction, supervision, discipline, discharge and relevant day-to-day aspects of the workplace behavior of the franchisee's employees.

9. Class Action Waivers

In *Iskanian v. CLS Transportation Los Angeles LLC* (Cal. Sup. Ct., June 23, 2014), the California Supreme Court held that class action waivers in arbitration agreements are not per se unlawful under California law. Actions brought under California's Private Attorneys General Act (PAGA), however, are not waivable on grounds of public policy in state court.

10. Class Action Methodology

In *Duran v. U.S. Bank National Ass'n* (Cal. Sup. Ct., May 29, 2014), the California Supreme Court rejected the verdict of a 40-day bench trial of a wage and hour class action and ordered a new trial of the entire matter, including reconsideration of class certification itself. The court held that trial of a class action must permit litigation of relevant affirmative defenses, even if those affirmative defenses turn on individual questions that make a class action inappropriate. Trial courts must consider a trial plan at the certification stage and must pay careful attention to whether a class action is manageable and a superior device to resolve a controversy in deciding whether to certify (or decertify) a class. The court also provided important guidance on use of statistical evidence, rejecting the statistical proof allowed by the trial court due to "numerous problems" that arose from lack of proper methodology.

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