New Laws in 2018

In preparation for 2018, below is a partial list of new laws affecting public agencies throughout California.

New Parent Leave Act SB 63

This bill would prohibit an employer, as defined, from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. The bill would also prohibit an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave. The bill would allow the employer to recover coverage costs under specific circumstances. The bill would provide that it would not apply to an employee who is subject to both specified state law regarding family care and medical leave, and the federal Family and Medical Leave Act of 1993. Under the bill, if the employer employs both parents and they are entitled to leave pursuant to this bill for the same birth, adoption, or foster care placement, the parents' mandated parental leave would be capped at the amount granted to an employee by the bill. The bill would authorize the employer to grant simultaneous leave to these parents.

This bill would also prohibit an employer from refusing to hire, or from discharging, fining, suspending, expelling, or discriminating against, an individual for exercising the right to parental leave provided by this bill or giving information or testimony as to his or her own parental leave, or another person's parental leave, in an inquiry or proceeding related to rights guaranteed under this bill. The bill would additionally prohibit an employer from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right provided under this bill.

For purposes of this section, "employer" means either of the following:

(1) A person who directly employs 20 or more persons to perform services for a wage or salary.
(2) The state, and any political or civil subdivision of the state and cities.

AB 168: This bill would prohibit an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant. The bill also would prohibit an employer from seeking salary history information about an applicant for employment and would require an employer, upon reasonable request, to provide the pay scale for a position to an applicant for employment. The bill would not prohibit an applicant from voluntarily and without prompting disclosing salary history information and would not prohibit an employer from considering or relying on that voluntarily disclosed salary history information in determining salary, as specified. The bill would apply to all employers, including state and local government employers and the Legislature and would not apply to salary history information disclosable to the public pursuant to federal or state law.

Expanded Harassment Training to Cover Gender Identity, Gender Expression, and Sexual Orientation (SB 396): The California Fair Employment and Housing Act (FEHA) requires employers with 50 or more employees to provide training and education regarding sexual harassment to all supervisory employees. Under SB 396, this prescribed training must now include content addressing harassment based on gender identity, gender expression, and sexual orientation. Employers also must post a poster developed by the Department of Fair Employment and Housing regarding transgender rights.

AB 1556 revises California's Fair Employment and Housing Act by deleting gender-specific personal pronouns in California's anti-discrimination, anti-harassment, pregnancy disability and family/ medical leave laws by changing "he" or "she," for example, to "the person" or "the employee".

Wage Discrimination (AB 46): The existing Fair Pay Act prohibits private employers from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex, or of a different race or ethnicity, for substantially similar work. AB 46 extends the Fair Pay Act prohibitions to public employers, by defining "employer" to include public and private employers.

Union Organizing (SB 285): SB 285 prohibits public employers from "deterring or discouraging" public employees from becoming or remaining members of an employee organization. This law applies to counties, cities, districts, the state, schools, transit districts, the University of California, and the California State University, among others. The Public Employment Relations Board (PERB) has jurisdiction to enforce this law.

AB 1008 prohibits employers with five or more employees from asking about criminal history information on job applications and from inquiring about or considering criminal history at any time before a conditional offer of employment has been made. There are limited exemptions for certain positions, such as those where a criminal background check is required by federal, state or local law.

Once an employer has made a conditional offer of employment, it may seek certain criminal history information. However, before denying employment because of a criminal conviction, these specific steps must be followed:

- The employer must first conduct an individualized assessment to determine whether the conviction has a direct and adverse relationship with the job's specific duties that justifies denying employment.
- Any preliminary decision not to hire because of a conviction history requires written notice to the applicant, who must be given the opportunity to respond. A specific timeline and process for this step

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must be followed. The employer must consider any information provided by the applicant before making a final decision.
- Any final decision to deny employment because of the criminal conviction requires another specific written notice to the applicant.

Effective January 1, 2018, the Immigrant Worker Protection Act will prohibit employers in California from voluntarily consenting to allow immigration enforcement agents to enter any non-public areas of their workplaces unless they obtain a subpoena or judicial warrant.

The Act also will prohibit employers from consenting to enforcement agents accessing, reviewing or obtaining their employee records (except Forms I-9 and other documents for which ICE has provided the required three days' notice before inspection) without a subpoena or judicial warrant.

Employers also will be required to notify employees of any inspections of Forms I-9 or other employment records within 72 hours of receiving notice of the inspection, including:
- The name of the agency conducting the inspections;
- The date the employer received notice of the inspection;
- The nature of the inspection to the extent known; and
- A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms for the inspection to be conducted.

The penalties for noncompliance are steep, with civil penalties of $2,000 to $5,000 for a first violation and $5,000 to $10,000 for each subsequent violation. In addition, employers will be prohibited from re-verifying the employment eligibility of a current employee at a time or in a manner not required by specified federal law.

Violations of this requirement will be subject to a civil penalty of up to $10,000.

For additional information please contact SDRMA Chief Risk Officer Dennis Timoney at 800.537.7790 or email Dennis at dtimoney@sdrma.org