



October 3, 2014

## Gubernatorial Writer's Cramp: 2014 California Employment Legislation Affecting Private Sector Employers

by Christopher E. Cobey, Marina C. Gruber and Monica Ahuja

Does his hand hurt? Between signing and vetoing bills this year, California Governor Jerry Brown exercised his executive signature on the highest number of bills sent to a California governor since 2008.

The California Legislature concluded the final year of its 2013-2014 regular session in the early morning of August 29, 2014. A total of 4,233 bills were considered during this two-year period. This year, preliminary figures indicate that the Legislature sent 1,073 bills to Governor Brown for approval.<sup>1</sup> By the signing deadline last Tuesday evening (September 30), Governor Brown had signed 931 bills into law, and vetoed 142 bills (13.6% of those sent to him in 2014).<sup>2</sup>

The following is a brief description of the major 2014 bills<sup>3</sup> affecting California private-sector employers. Unless otherwise noted, the effective date of all new laws is January 1, 2015.

### The Key New Employment Laws

- California enacted a right to **paid sick leave** (PSL) for most employees who do not have it. This 14-page bill, which generated nine amended versions and 17 committee and floor reports, was the most significant employment legislation in years, providing a PSL benefit to more than an estimated six million California workers who currently do not have that benefit. PSL eligibility will commence beginning July 1, 2015, and will eventually accrue at a rate of one hour of paid sick leave for every 30 hours worked. The new law is complex, creating eight new statutes and amending a ninth, and adding **recordkeeping** and

1 In comparison, the Legislature sent Governor Brown 895 bills in 2013, 998 bills in 2012, and 870 in 2011. The Legislature sent former Governor Schwarzenegger 1,029 bills in 2010, 893 in 2009, and 1,179 in 2008.

2 Brown's veto rates in previous years were 11% (2013), 12% (2012), and 14% (2011). In comparison, Governor Schwarzenegger's veto rates were 29% in 2010, 27% in 2009, and 35% in 2008.

3 All versions of each bill (including current law as amended by the bill), and committee and floor reports and votes, can be found at the California Legislative Information site (<http://leginfo.ca.gov>). "AB" refers to Assembly Bill; "SB" to Senate Bill.

**notice** requirements for employers. For full details on this important new law, see Michelle Barrett Falconer and Pam Salgado, *The Epidemic Continues: California Enacts Statewide Paid Sick Leave Law*. (AB 1522; adds Labor Code sections 245, 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, and amends section 2810.5.)

- A new measure addresses national origin discrimination that could result from the improper use of California driver's licenses. Specifically, the law **expands the definition of national origin discrimination** in California's Fair Employment and Housing Act (FEHA); prohibits employer discrimination on the basis of possessing a driver's license granted pursuant to the law that permits a person unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law ("AB 60 license",<sup>4</sup> and who is otherwise qualified to be granted a driver's license; stipulates that an employer violates FEHA by requiring a person to present a driver's license, unless possessing a driver's license (a) is required by law or (b) is required by the employer and the employer's requirement is otherwise permitted by law; provides that an action taken by an employer to comply with any requirement or prohibition under the federal Immigration and Nationality Act is not a violation of law. (AB 1660; amends Government Code section 12926 and Vehicle Code sections 1653.5, 12800.7 and 12801.9.)
- The governor signed an arbitration measure. This new law will **prohibit the waiver of protections** afforded under California civil rights laws in **arbitration agreements** or **pre-litigation settlement agreements** as a condition of entering into a contract for the provision of goods or services, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General or any other public prosecutor, or law enforcement agency, the Department of Fair Employment and Housing, or any court or other governmental entity. To be valid, waivers of the protections of the Ralph Civil Rights Act or the Tom Bane Civil Rights Act must be knowing, voluntary, in writing, and not expressly made as a condition of entering into a contract or as a condition of providing or receiving goods or services. These prohibitions do not apply to agreements to waive legal rights, penalties, forums or procedures "after a legal claim has arisen." (AB 2617; amends Civil Code sections 51.7, 52, and 52.1.)

## New Laws Applicable to All or Most California Private-Sector Employers

- Employees will be able to recover damages more quickly for wage and hour violations. This law allows an employee who alleges state **minimum wage violations** to recover liquidated damages in an amount equal to the wages unlawfully unpaid with interest at any time before the expiration of the statute of limitations on the underlying wage claim(s). (AB 2074; amends California Labor Code Section 1194.2.)
- Penalties are expanded for **willful failure to pay wages of a resigned or discharged employee**. The new measure expands the penalties, restitution and liquidated damages available for the Labor Commissioner to pursue on an employee's behalf when an employer willfully fails to pay wages of a resigned or discharged employee, and authorizes the Labor Commissioner in administrative actions to seek waiting time penalties against employers pursuant to Labor Code section 203 (a right previously available to employees in civil actions only); any citation issued by the Labor Commission for Section 203 waiting time penalties would require an investigator to find an employer **willfully** failed to pay wages. (AB 1723; amends Labor Code section 1197.1.)
- There are expanded grounds and remedies for **immigration-related retaliation**. This new measure prohibits an employer from threatening to file, or filing, a false complaint with any state or federal agency; prohibits an employer from discharging or in any manner discriminating, retaliating, or taking any adverse action against **an employee because the employee updates or attempts to update personal information** based on a lawful change of name, social security number, or federal employment authorization document; prohibits an employer's compliance with these provisions from serving as the basis for a claim of discrimination, including any disparate treatment claim; and requires that the civil penalty assessed for unlawful immigration-related retaliation of up to \$10,000 be awarded to the employee or employees who suffered the violation. (AB 2751; amends Labor Code sections 98.6, 1019, and 1024.6.)

---

<sup>4</sup> Pursuant to negotiations between the California Department of Motor Vehicles and the federal Department of Homeland Security reported on September 19, 2014, by the DMV, these licenses will include on their face the phrase "federal limits apply."

- The “**Child Labor Protection Act of 2014**” allows for an award of treble damages if a minor is discriminated against in the terms or conditions of his/her employment because he/she filed a claim or civil action alleging a Labor Code violation that arose during minority; statute of limitations for child labor violations is tolled until the child reaches 18 years of age; civil penalties for a violation involving a minor 12 years of age or younger are increased to between \$25,000 and \$50,000 for each violation. (AB 2288; adds Labor Code Section 1311.5.)
- A new measure extends the Fair Employment and Housing Act’s anti-harassment and anti-discrimination protections to **unpaid interns**. Employers are prohibited from discrimination based on protected characteristics in the “selection, termination, training or other terms” of unpaid internships; employers are prohibited from harassing unpaid interns based on protected characteristics; employers may be held liable for sexual harassment of unpaid interns by non-employees if the employer knew or should have known of the conduct, but failed to take appropriate corrective action promptly; employers may not take adverse actions against unpaid interns based on religious beliefs, and must provide reasonable accommodations for religious observance unless it would pose an undue hardship on the employer. (AB 1443; amends California Government Code section 12940.)
- The content of the two-hour supervisory sexual harassment **training** required of employers with at least 50 employees every two years is expanded to include a “**prevention of abusive conduct**” component in the training; “abusive conduct” is defined as “conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. Abusive conduct may include 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, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.” The new law does not expand the duration of the mandatory training—only the content of that training. (AB 2053; amends Government Code Section 12950.1)<sup>5</sup>
- A new law modifies most existing statutory terms used to describe **mental health conditions**. It replaces terms such as “feeble-minded,” “insane,” “mentally disordered,” “mentally defective,” and “abnormal” with terms such as “persons with a mental health disorder” or “persons who lack legal capacity to make decisions.” (AB 1847; amends dozens of Code sections.)
- A new measure increases employer responsibilities in the event of a **data breach**. Among other provisions, the amended statute requires a business that owns, licenses, or maintains personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. With respect to the information required to be included in the notification of a data breach—if the person or business providing the notification was the source of the breach, it requires that the person or business offer to provide appropriate identity theft prevention and mitigation services, if any, to the affected person at **no cost** for not less than 12 months if the breach exposed or may have exposed specified personal information. (AB 1710; amends Civil Code section 1798.81.5.)<sup>6</sup>

#### Unemployment Insurance; Workers’ Compensation; Workplace Safety:

- As part of a 110-page budget bill, a new urgency statute **increases** the **penalties** on employers that fail to pay **unemployment insurance contributions** and personal income withholdings and other employer taxes from 10% of the amount of contributions to 15% of the amount of contributions and increases the penalty for unreported wages from \$10 to \$20 per each unreported worker. The amended statute also imposes a fee on contractors of public works projects to enforce current laws for public project contracting at the Department of Industrial Relations; the fee will be set at \$300 per contractor for 2014-15. (SB 854; amends Unemployment Insurance Code sections and 1112 and 1114; **effective June 20, 2014.**)

<sup>5</sup> The California Department of Fair Employment and Housing has indicated, in response to questions from Littler’s Workplace Policy Institute®, that there will be no Departmental requirement on how many minutes must be devoted to abusive conduct training as part of sexual harassment training. In response to a question on the required content of AB 2053 abusive conduct training, the Department has recommended that training cover the language as written in new Government Code section 12950.1(g)(2). The Department has indicated that it would be reasonable to state that, although workplace bullying is not actionable under the FEHA, its prevention is nonetheless included in the training as a good business practice.

<sup>6</sup> For further information on this new statute, see Philip L. Gordon and Zoe M. Argento, *California Takes the Lead Again in Data Breach Laws*, Littler’s Workplace Privacy Counsel (Oct. 3, 2014), available at <http://www.littler.com/workplace-privacy-counsel/california-takes-lead-again-data-breach-laws>.

- Starting in 2017, **physicians' assistants** may be able to **certify an employee's disability** for unemployment insurance (UI) purposes. The new law amends the Physician Assistant Practice Act to authorize a physician assistant, for purposes of UI, to certify disability, after performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with the Act; expands the definition of practitioner to include a physician assistant; and requires the Employment Development Department to implement these provisions on or before January 1, 2017. (SB 1083; amends Unemployment Insurance Code section 2708.)
- Employees seeking unemployment benefits will be provided more time to contest the denial of unemployment benefits. Effective July 1, 2015, the deadline for requesting reconsideration from the EDD of its determination of eligibility for unemployment benefits will be **30 days** (instead of 20 days) from the date of notice. Applicants will have **30 days** (instead of 20 days) to initiate an appeal to the California Unemployment Insurance Appeals Board of an administrative law judge's decision affirming, reversing, modifying, or setting aside an eligibility determination. (AB 1314; amends, repeals, and adds Unemployment Insurance Code sections 1030, 1032.5, 1328, 1330, 1332, 1334, 1377, 3654.4, 3655, 3656, 3701, 4655, 4656, and 4701.)
- Pursuant to a new measure, the coverage of the **priority calendar** of the administrative director of the Division of Workers' Compensation will extend not only to cases in which employees are represented by an attorney and the disputed issues are employment or injury, but also to cases of employees who are or were employed by an illegally uninsured employer and the disputed issues are employment or injury. (AB 1746; amends Labor Code section 5502.)
- The Governor signed a bill that prohibits the Division of Occupational Safety and Health (DOSH) from granting, for serious violations of employment safety laws, a proposed **modification to civil penalties for abatement or credit for abatement** unless the employer has done one of the following: (1) abated the violation at the time of the initial inspection; (2) abated the violation at the time of the subsequent inspection (prior to the issuance of a citation); or (3) submitted a signed statement under penalty of perjury with supporting evidence when necessary to prove abatement. DOSH can only grant a modification if the employer abated the violation at the time of the initial inspection or subsequent inspection, or the sworn statement and supporting evidence are received within 10 days after the end of the period fixed for abatement. In cases of serious, repeat serious, or willful violations, an appeal to the Occupational Safety and Health Appeals Board by the employer will not stay or suspend the requirement to abate the hazards unless the employer can demonstrate by a preponderance of the evidence that a stay or suspension of the abatement will not adversely affect the health and safety of employees. (SB 1634; amends Labor Code sections 6319, 6320, and 6625.)
- An updated law replaces the telegraph with **email** among the options by which an employer must make the required immediate report by telephone or email of every case involving an employee's serious injury or illness or death to the Division of Occupational Safety and Health (DOSH). (AB 326; amends Labor Code section 6409.1.)

## New Laws Applicable to Some California Private-Sector Employers

- This new law is very significant for those California employers who utilize **labor contractors**. The new statute requires that client employers and labor contractors share all civil liability and civil legal responsibility for payment of wages and workers' compensation obligations to workers supplied by a labor contractor. Client employers are prohibited from shifting legal duties or liabilities under workplace safety provisions to labor contractors. The new statute defines both "client employer" and "labor contractor," and provides exemptions for specified nonprofit, labor, and motion picture payroll services organizations, and third parties engaged in an employee leasing arrangement. (AB 1897; creates Labor Code section 2810.3.)
- An unusual law seeking to spotlight the allegedly inadequate compensation practices of larger employers has been created in what some call "**the public shaming act.**" The new law requires, until January 1, 2020, that various state agencies compile data to determine the total average cost of state and federally funded public assistance benefits provided to each identified employer's employees ("beneficiaries"). The data is then provided to the State Department of Finance annually to transmit to the Legislature and post on the Department's Internet Web site a report summarizing, for each subject employer, the cost to governments of the assistance provided to each company's beneficiaries. The new law defines an employer as an individual or organization that

employs 100 or more beneficiaries of the Medi-Cal program. The new law prohibits an employer from disclosing to any person or entity that an employee receives or is applying for public benefits, unless authorized by state or federal law. (AB 1792; repeals and amends Government Code section 13084, amends Unemployment Insurance Code section 1095, and adds and repeals Welfare and Institutions Code section 11026.5.)

- A measure promoting the protection against workplace violence in health care requires the Occupational Safety and Health Standards Board, by no later than July 1, 2016, to adopt standards developed by the Division of Occupational Safety and Health that require specified types of **hospitals to adopt a workplace violence prevention plan** as a part of the hospital's injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior; by January 1, 2017, and annually thereafter, the Division would be required to post a report on its website containing specific information related to violent incidents at hospitals. (SB 1299; adds Labor Code section 6401.8.)
- An amended statute confirms that **recovery periods are counted as "hours worked"** for which there shall be no deduction from an employee's wages. (SB 1360; amends Labor Code section 226.7.)
- An amended law provides additional leave to qualified employees. **Health care provider employees** who also serve as volunteer firefighters, reserve peace officers, or emergency rescue personnel must give their employers notice when they are designated as emergency rescue personnel and provide their employers of notice regarding deployment of emergency rescue personnel duties; and expands the definition of "emergency rescue personnel" to include an officer, employee or member of a disaster medical response team sponsored or requested by the state. (AB 2536; amends Labor Code section 230.3.)
- Amendments to several existing statutes prohibit licensure **of farm labor contractors** who have, within the past three years, been found by a court or an administrative agency to have committed sexual harassment of an employee, or employed a supervisor who the farm labor contractor knew or should have known had been found by a court or administrative agency to have committed sexual harassment of an employee. The enacted bill authorizes the Labor Commissioner to revoke, suspend, or refuse to renew a farm labor contractor's license. It also increases the license fee from \$500 to \$600 to fund the Farm Labor Contractor Enforcement Unit and Farm Labor Contractor License Verification Unit, and mandates one hour of sexual harassment training per year for farm labor contractors, and sexual harassment training for nonsupervisory employees. Finally, the amended statutes provide additional prohibitions and penalties. (SB 1087; amends Labor Code sections 1684, 1685, 1690, 1690.1, 1694, 1695, 1695.55, 1696.2, 1696.5, and 1697.)
- Follow-up legislation to a bill enacted last year requires petroleum refinery employers to submit, beginning September 15, 2015, an annual schedule to the Division of Occupational Safety and Health of "**planned turnarounds**" ("planned, periodic shutdown of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment") for the following year. The new statutes require petroleum refinery employers to provide onsite refinery access and documentation relating to planned turnarounds to DOSH, upon request. The new laws permit information that an employer has designated as a trade secret to be excluded from release to members of the public, but may be disclosed to DOSH when relevant to an administrative proceeding. (SB 1300, creates Labor Code sections 7872 and 7873.)
- A very specialized new law seeks to make clear when persons providing services for a public entity are not, in fact, employed by the public entity. This new law prohibits a person, firm, corporation, or association that is a **nongovernmental entity and contracts to perform**, on or after January 1, 2015, **public health and safety labor or services** (defined as fire protection services, rescue services, emergency medical services, hazardous material emergency response services, and ambulance services) from displaying on a vehicle or uniform a logo that reasonably could be interpreted as implying that the labor or services are being provided by employees of the public agency, unless the vehicle or uniform conspicuously displays specific disclosures. The new law prohibits a public agency from requiring a person or employee of a nongovernmental entity providing public health and safety labor or services under contract with the public agency to wear a badge containing the logo of the public agency. It also prohibits a nongovernmental entity providing public health and safety labor or services under contract with a public agency from requiring a person or its employee to wear a badge containing the logo of the public agency. The new law's provisions may be enforced by the Consumers Legal Remedies Act. (SB 556; adds Civil Code section 3273.)

- A series of seven new or amended statutes make significant changes to the definition, responsibilities, and potential liabilities of a **foreign labor contractor** (FLC). A FLC is now defined as a person who performs foreign labor contracting activity, as defined. The new law requires that, on and after July 1, 2016, a FLC register with the Labor Commissioner. The new law imposes certain conditions for registration, including payment of specified fees, and other requirements; prohibits a person from knowingly entering into an agreement for the services of a FLC that is not registered; and requires persons knowingly using the services of FLCs to obtain foreign workers to disclose specified information to the Labor Commissioner. The new law: requires a FLC to disclose in writing to each foreign worker who is recruited for employment certain information, and prohibits a FLC and its agent from assessing a fee or cost to a foreign worker for foreign labor contracting activities. The new law: limits the amount of housing costs charged to the foreign worker to the market rate for similar housing; prohibits requiring a foreign worker to pay any costs or expenses prior to commencement of work; prohibits additional requirements or changes to the terms of the contract originally provided to and signed by the foreign worker, unless the foreign worker is provided at least 48 hours to review and consider the additional requirements or changes; requires the specific consent of the foreign worker to each additional contract requirement or change; authorizes a civil penalty for violations; authorizes the Labor Commissioner or a person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both; and authorizes recovery of damages, costs, and reasonable attorney's fees. The new law exempts a person from joint and several liability for an act or omission by a FLC if the person is using a registered FLC's services, and exempts a person who uses the services of a registered FLC from misdemeanor liability for an act or omission by the FLC. (SB 477; amends Business and Professions Code sections 9998.1, 9998.6, and 9998.8, adds Business and Professions Code sections 9998.1.5, 9998.2.5, 9998.10, and 9998.11, and repeals and adds Business and Professions Code section 9998.2.)
- Another law that extends the "ban-the-box" movement to additional employment sectors, labeled the "Fair Chance Employment Act," requires that any person submitting a bid for a state contract involving **onsite construction-related services** certify that he or she will not ask an applicant for onsite construction-related employment to disclose information concerning his or her conviction history at the time of an initial employment application. Employers hiring for positions that are required by state or federal law to conduct a conviction or criminal history background check, or contract positions with a criminal justice agency, are excluded from coverage. The new law also excludes workers hired out of a hiring hall pursuant to a bona fide collective bargaining agreement. (AB 1650, creates Public Contract Code section 10186.)
- In an effort to improve the accessibility of the results of arbitrations held through the auspices of public arbitration services, a new law requires a **private arbitration company** to collect additional information related to a consumer arbitration case, and to provide the information in a single cumulative report. The new law requires the company to make the report available in a format that allows the public to search and sort the information using readily available software, and to make the report accessible on the private arbitration company's Internet Web site. Any amendments made by this law to the reporting requirements of a private arbitration company would not apply to consumer arbitrations administered by the private arbitration company before January 1, 2015. (AB 802; amends Code of Civil Procedure section 1281.96.)
- Another specialty bill amends the Labor Code to extend "waiting time" penalties under Labor Code section 203 to employees working in the **entertainment industry** who are not paid final wages due upon termination/separation from employment in accordance with Labor Code sections 201, 201.3, 201.5, 201.9, and 202. The new law also provides that the civil penalties of Labor Code section 203 apply to an employer's violation of a time limit for payment of final wages contained in a collective bargaining agreement. (AB 2743; amends Labor Code section 203.)
- If a person has a valid **Child Performer Services Permit**, that person must include the permit number on advertising in print or electronic media, including, but not limited to, Internet Web sites, or on any other medium of advertising. (AB 1680; amends Labor Code section 1706.)

#### Health Care Coverage:

- Wading further into the health care administration details, a new bill requires that the index rate of user fees set by the California Health Benefit Exchange (Exchange) under the federal **Patient Protection and Affordable Care Act (PPACA)**; also, "ACA" or "Obamacare") be adjusted based on Exchange user fees. It defines the term "health benefit plan" for purposes of the provisions governing non-grandfathered small employer health care service plans, and specifies that health care service plans and health insurers

participating in the small group market of the Exchange are only required to fairly and affirmatively offer, market, and sell in that market the platinum, gold, silver, and bronze levels of coverage. The new law specifies that the requirement for plans or insurers not participating in the Exchange to offer at least one standardized product designated by the Exchange in each of those levels of coverage applies only to the individual and small group markets, and changes notice, notification, and other requirements. (SB 959; amends 20 sections of the Government, Health & Safety, and Insurance Codes.)

- Another compilation of statutory revisions includes, among other provisions, a modification of the employer's mandatory notice concerning **group health care service plans or group health insurance policies** to require that the notice inform the eligible employee or dependent that he or she may be excluded from eligibility for coverage until the next open enrollment period. (SB 1034; amends, repeals and adds 12 sections of the Health & Safety and Insurance Codes.)

### Prevailing Wages:

- **Apprenticeship contributions** paid to the California Apprenticeship Council for work performed on California public works projects must be allocated and divided among multi-employer apprenticeship programs operating in the same craft and geographic region based on the number of apprentices in each county registered in each apprenticeship program. (AB 1870; amends Labor Code section 1777.5.)
- Public works project contractors may now bring **legal actions against "hiring parties,"** including against owners and developers, to recover increased costs—including labor costs, penalties, and legal fees incurred as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency, or a court—resulting from a finding that the work performed on the project was a covered public work and subject to the requirements of the state prevailing wage law. (AB 1939; creates Labor Code section 1784.)
- The **definition of "public works"** is expanded to include infrastructure project grants from the California Advanced Services Fund. The California Public Utilities Commission is not deemed to be the awarding body or body awarding the contract in the expanded definition. (AB 2272; amends Labor Code section 1720.)
- The Division of Labor Standards Enforcement (DLSE) may now use **enforcement mechanisms** that have previously been available for prevailing wage violations (including restrictions for no less than one year and no more than three years on bidding for public works projects, awarding of public works projects, and performing work on public works projects under Labor Code section 1777.1) against contractors and subcontractors who fail to meet prevailing wage apprenticeship requirements under the Labor Code. Under this new statutory scheme, the Labor Commissioner shall issue civil wage and penalty assessments for violations of apprenticeship requirements. Violations of prevailing wage apprenticeship requirements may result in penalties of \$100 for each calendar day of noncompliance for a contractor's first violation of the apprenticeship requirements, and \$300 for each calendar day for a second or subsequent violation within a three-year period. (AB 2744, amends Labor Code section 1777.1, repeals existing section 1777.7, and adds new section 1777.7.)
- The time period within which the Labor Commissioner must serve **civil wage and penalty assessments** (CWPA) may now be tolled until the Labor Commissioner's "actual receipt of the valid notice of completion" or "a document evidencing the awarding body's acceptance of the public work on a particular date." Awarding bodies must furnish a copy of a valid notice of completion or other document evidencing the awarding body's acceptance of project within 10 days of the Labor Commissioner's request for such documentation. If no such documentation is available at the time of the Labor Commissioner's request, the awarding body must notify the Labor Commissioner that no documentation is available, and then furnish the documentation evidencing completion or acceptance within 10 days after the notice of completion is filed or the awarding body accepts the public work. (SB 266; amends Labor Code section 1741.1.)

## Employment-Related Bills Vetoed or Failing Passage

### Vetoed by the Governor:

- Would have created "unemployed" as a new protected category in the FEHA (AB 2271).
- Would have reformed franchise law by, among other changes, switching burden of proof of breach, and using an entirely new legal standard to assess breach (SB 610).

### Failing Passage:

- Including home health care workers in paid sick leave bill (prior versions of AB 1522).
- Imposition on employer properties of pre-determination liens for employee wage claims (AB 2416).
- Adding familial association as a protected category to the FEHA (SB 1407).
- Annually indexing increases to the state minimum wage (SB 935).

## Looking forward to 2015

Expect to see many of the measures that were either vetoed by the Governor, or that failed passage in the Legislature in 2014, to re-surface as new proposals in 2015.

What the Legislature passes, and what the Governor signs next year, will be affected by the November 2014 general election in which Governor Brown is seeking re-election, and in which 100 of the 120 state legislative seats in the Assembly and Senate will be up for election—as well as events in Washington, D.C.

## Other Wage Rate Increases for 2015

The City of San Jose's minimum wage increases to \$10.30 an hour effective January 1, 2015.<sup>7</sup>

The 2015 City and County of San Francisco's minimum wage rate had not yet been announced as this *ASAP* went to production.<sup>8</sup> The 2015 minimum rate of pay that would render computer software employees exempt under California Labor Code Section 515.5(a)(3) has also not been announced as of the date of this *ASAP*'s publication.

## What Employers Need to Do Now

1. Update employee handbooks and, if necessary, policies and procedures, related to the increase in the minimum wage rate; changes in available leaves of absence; new protected categories; and prohibitions against discrimination in employment based on citizenship or immigration status, among other changes made by the new legislation.
2. Consider revising handbook and policies and procedures to reflect 2014 major case holdings, as described in Littler's 2014 publications available at [www.littler.com](http://www.littler.com).
3. Train, or send a memo to supervisors, advising them of the new laws, their responsibility to know these new laws, and their responsibilities to administer policy in conformity with the new laws.
4. Stay alert for modifications coming later in 2014 regarding new California driver's licenses (2013's AB 60), and how they may or may not be used in the workplace.
5. Contact any of the co-authors with any questions about new laws mentioned in this *ASAP*.

[Christopher Cobey](#) is Knowledge Management Counsel, and [Marina Gruber](#) and [Monica Ahuja](#) are Associates, in Littler Mendelson's San Jose office. Littler's Workplace Policy Institute® (WPI™) is devoted to developing and influencing workplace legislative and regulatory developments at the federal and state levels. WPI provides the employer community with advocacy services, including litigation support. In addition, WPI closely monitors important labor, employment, and benefits policy initiatives and provides clients, trade associations, and policymakers with timely and thoughtful analysis of the practical implications of such proposals. If you would like further information, please contact your Littler attorney at 1.888.Littler or [info@littler.com](mailto:info@littler.com), or Mr. Cobey at [ccobey@littler.com](mailto:ccobey@littler.com), Ms. Gruber at [mgruber@littler.com](mailto:mgruber@littler.com), or Ms. Ahuja at [mahuja@littler.com](mailto:mahuja@littler.com).

<sup>7</sup> See <http://www.sanjoseca.gov/civicalerts.aspx?AID=907>.

<sup>8</sup> Information on the Minimum Wage Ordinance can be accessed here: <http://sfgsa.org/index.aspx?page=411>.