

Resources

Two New California Employment Laws To Take Effect in January

October 16, 2017

On October 12, 2017, Governor Brown signed two new laws that take effect January 1, 2018, that will affect California employers. Senate Bill (SB) 63 mandates that small businesses provide 12 weeks of baby bonding to employees. Assembly Bill (AB) 168 bans employers from inquiring about a job applicant's salary history.

SB 63 extends parental leave requirements similar to the baby bonding leave set forth in the California Family Rights Act (CFRA) and federal Family and Medical Leave Act (FMLA) to California small businesses employing 20-49 workers. Currently, under CFRA and FMLA, employers with 50 or more employees are required to provide up to 12 weeks of leave to an employee within one year of a child's birth, adoption or foster care placement, who: 1) has worked for the employer for more than 12-consecutive months; 2) has worked at least 1,250 hours during the prior 12-month period; and 3) works at a worksite where there are at least 20 employees within a 75-mile radius. Upon return, the employee must be afforded the same or a comparable position, and employers are prohibited from retaliating against employees for taking leave. The law also requires employers to maintain and pay for coverage under a group health plan for employees taking baby bonding leave. SB 63 extends this requirement to employers with 20-49 employees. To aid in disputes over the new legislation, SB 63 requires the Department of Fair Employment and Housing (DFEH) to create a parental leave mediation pilot program. The program will allow employers to request mediation of any employee's disputes filed with DFEH related to their leave.

The second law, AB 168, prohibits employers from asking about a job applicant's salary history or seeking such information, and from relying on salary history information as a factor in determining what salary to offer an applicant. The law also will require an employer to provide a pay scale for a position upon demand. However, the law also provides that if an employee voluntarily and without prompting discloses salary history information to a prospective employer, the employer may consider and/or rely on that information to determine the salary for that applicant. This follows recent legislation amending California's Fair Pay Act, which prohibited reliance on salary history as the *sole* determinant of a new employee's salary. Now, unless an applicant volunteers the information, employers may not consider salary history at all.

With the enactment of these laws, smaller employers now have brand new leave obligations, and all employers face new restrictions in the hiring process. Employers with operations in California should take the following steps:

- If there are more than 20 but fewer than 50 employees within a 75-mile radius, employers now must familiarize themselves with the "baby bonding" requirements of FMLA and CFRA (employers with more than 50 employees in California already are subject to the requirements). Employers are required to notify employees of their rights under the law, and should train supervisors and HR personnel on what may be new requirements.
- All employers should review their job application and any hiring protocols to determine whether any form or any standard question is designed to elicit salary history information. Anyone involved in the hiring process, including interviewers, should be retrained and advised to avoid such questions.

History has shown California to be something of a trendsetter in the area of employment law, so employers in other states should keep a close eye on developments in the Golden State. For more information, or to arrange a review of your policies or a training session, please contact the authors of this Alert, Jack Schaedel (213-457-1766) or Jamie Lopez (213-457-1830), or another attorney in Dykema's Labor & Employment Law practice group.

Attorneys

Laura P. Worsinger

Two New California Employment Laws To Take Effect in January (Cont.)

Practice Areas

Labor & Employment

As part of our service to you, we regularly compile short reports on new and interesting developments and the issues the developments raise. Please recognize that these reports do not constitute legal advice and that we do not attempt to cover all such developments. Rules of certain state supreme courts may consider this advertising and require us to advise you of such designation. Your comments are always welcome. © 2020 Dykema Gossett PLLC.