SIMPSON·DELMORE·GREENE

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Employment Law UPDATE

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California Arbitration Agreement Deadline is January 1. Act Now!

On January 1, 2020, new legislation (Assembly Bill 51) that prohibits employers from requiring employees to sign agreements to arbitrate claims arising under the California Labor Code (including meal, rest, overtime violations) and Fair Employment and Housing Act (including discrimination, harassment, or retaliation claims) is set to take effect. While the new law drastically limits the ability of employers to impose arbitration agreements beginning January 1, agreements entered prior to January 1 will still be effective. For that reason, we recommend that employers act now, or risk losing the opportunity to have employees sign invaluable arbitration agreements.

The U.S. Supreme Court has repeatedly said that state laws that treat arbitration agreements less favorably than other contracts are pre-empted by the Federal Arbitration Act (FAA). For that reason, former California governor Jerry Brown vetoed previous iterations of the same bill, citing concerns about federal pre-emption. While there is little doubt that the new legislation will face legal challenges based on federal pre-emption, it could take years of litigation before a final resolution is reached. Until then, employers must assume that any mandatory arbitration agreement entered into on or after January 1 will violate AB 51, will be unenforceable, and may subject the employer to both criminal and civil liability. Specifically, violations of the new law may constitute an "unlawful employment practice" under FEHA, and may subject employers to the same liability as if the employer were sued for discrimination based on, for example, race or gender. Employees who bring successful claims may also be entitled to an award of attorneys' fees and costs. Finally, violating the new law may also be a criminal misdemeanor, punishable by up to six months in jail and/or a fine of up to $1,000.

For all clients who do not currently have arbitration agreements in place, we encourage you to contact us immediately to determine whether an arbitration agreement would be beneficial for your particular business. For those clients already utilizing arbitration agreements, we recommend two things: 1) to the extent possible, ensure that all of your employees have signed the agreement prior to the new year, including any new hires; and 2) contact us immediately to discuss the implication of the new law. Please keep in mind that as of January 1, 2020, continuing to have employees sign your current arbitration agreement, even if it was previously drafted by Simpson Delmore Greene LLP, could subject you to liability.

New Law Changes Lactation Accommodation Requirements and Mandates Specific Written Policy Distributed to All Employees

Starting January 1, 2020, employers must comply with more stringent requirements when accommodating employees who wish to express breastmilk at work under Senate Bill 142. The new law contains a private right of action for employees, meaning that employers who fail to provide appropriate accommodations are now subject to civil lawsuits by employees under Private Attorneys General Act (PAGA). Previously, such a remedy did not exist.

To comply with SB 142, employers will need to provide a lactation room or location in close proximity to the employee's work area that is shielded from view, free from intrusion, and also meets the following requirements: (1) is safe, clean, and free from hazardous materials; (2) contains a surface to place a breast pump and personal items; (3) has a place to sit; and (4) has access to electricity or other alternative devices needed to operate an electric or battery-powered breast pump. Employers must also provide employees with access to a sink and refrigerator (or refrigeration device such as a cooler) in close proximity to their workspace. If the employer has operational, financial, or spatial limitations that limit its ability to provide a permanent space, a temporary space may be provided (as long as it is not a bathroom), and is close to the employee's workspace, is free from intrusion, and shielded from view. Where a multipurpose room must be used as the designated lactation room, the use of the room for lactation must take precedence over any other use.

Where the previous lactation accommodation law provided exemptions for any employer that could demonstrate undue hardship, the new law does not contain any exceptions for large employers. Employers with 50 or more employees must find a way to comply. Employers with fewer than 50 employees may be exempt if they are able to demonstrate that abiding by the requirements would cause significant expense or difficulty in relation to the employer's size, financial resources, or the nature or structure of the business.

Importantly, in addition to the new requirements for the lactation space, employers are required to have a *written policy* setting forth the employee's rights under SB 142. The policy must be distributed to *all* employees upon hire and whenever a request is made for parental leave.

Employers with existing lactation accommodation policies will likely need to have them updated in order to comply SB 142. Employers who do not currently have a lactation accommodation policy will need to implement one in the new year. Additionally, employers who receive requests for accommodations should contact counsel to ensure that their practices with respect to break time and provision of a lactation space are compliant. Finally, employers with non-traditional workspaces are urged to contact counsel for advice on how to create compliant lactation spaces.

Changes to State Minimum Wage Rates in the New Year

California's minimum wage is set to increase again this January, moving the state closer to its current goal of $15.00 an hour. On January 1, 2020, the minimum wage will increase to $12.00 an hour for employers with fewer than 26 employees, and $13.00 an hour for employers with more than 26 employees.

In addition to the statewide minimum hourly wage requirement, many employers are subject to local minimum hourly wage ordinances in the cities where their employees perform work. Employers must always pay the highest rate applicable in the area where employees are performing work. The following cities will see increases to the minimum hourly wage effective January 1, 2020:

Location	2019 Rate	2020 Rate
Belmont	$13.50	$15.00
Cupertino	$15.00	$15.35
Daly City	$12.00	$13.75
El Cerrito	$15.00	$15.37
Los Altos	$15.00	$15.40
Menlo Park	State Rate	$15.00
Mountain View	$15.65	$16.05

Novato	State Rate	$13.00
Palo Alto	$15.00	$15.40
Petaluma	State Rate	$15.00
Redwood City	$13.50	$15.38
Sacramento	$11.75 (100 employees or fewer)*	$12.50 (101 employees or more)*
San Diego	$12.00	**$13.00****
San Jose	$15.00	$15.25
San Mateo	$15.00	$15.38
Santa Clara	$15.00	$15.40
Sonoma	State Rate	$13.50
South San Francisco	State Rate	$15.00
Sunnyvale	$15.65	$16.05

* Sacramento employers may also receive a credit of up to $2 per hour by providing qualified health care benefits to employees. For example, an employer with 150 employees who provides qualifying health care benefits to employees may be bale to pay $10.50 per hour instead of $12.50 per hour (assuming $10.50 per hour still complies with federal and state minimum wage laws in 2020).

**San Diego's minimum wage ordinance states that the minimum wage will increase based on a Consumer Price Index (CPI) adjustment. However, it appears that the city council mistakenly violated the ordinance and increased the minimum wage to the state rate for large employers, which is well above the increase in CPI. We expect that the city council may correct its mistake prior to the new year, meaning that the $13.00 rate will not be imposed on smaller employers. However, employers with more than 26 employees will still be required to pay the $13.00 state rate.

Exempt Salary Requirement to Increase Along with the State Minimum Wage

Because the minimum salary requirement for exempt employees tracks the state minimum hourly wage, the salary requirement will increase on January 1 each year until 2023, depending on the size of the business. Thereafter, the rate may continue to increase based on increases to the CPI:

Year	Small Business Rate (25 or fewer)	Large Business Rate (26 or more)
2019	$45,760	$49,920
2020	$49,920	$54,480
2021	$54,480	$58,240
2022	$58,240	$62,400
2023	$62,400	Based on CPI

Employers seeking guidance on complying with minimum exempt salary requirements, including how to notify employees, how to count employees to determine the applicable rates, and whether exemptions to the minimum wage could apply, should contact counsel prior to January 1.

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