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EMPLOYMENT LAW

SAN JOAQUIN COUNTY HISPANIC CHAMBER OF COMMERCE

2019 BUSINESS FORECAST CONFERENCE

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AGENDA

- SB 3: Minimum Wage Increase
- SB 1252: Free Copy of Payroll Records
- AB 1066: Overtime for Agricultural Workers
- AB 2334: Cal-OSHA Citations
- SB 1976: Lactation Accommodation
- SB 970, AB 2034: Human Trafficking Training
- SB 826: Women on Corporate Boards

AGENDA

- ❑ “Me, Too” Legislation
 - ❑ SB 1300: Sexual Harassment Refined, etc.
 - ❑ SB 224: Expanded Personal Liability
 - ❑ SB 820, AB 3109: Confidentiality in Settlement Agreements
 - ❑ AB 2770: Protection Against Defamation Claims
 - ❑ AB 1619: Statute of Limitations on Civil Sexual Assault
 - ❑ SB 1343: Sexual Harassment Prevention Training

MINIMUM WAGE INCREASE

SB 3, enacted in 2016, provides for increases to the California **minimum wage** every year for six years beginning 2017. This is the third increase.

MINIMUM WAGE INCREASE

| <u>Effective Date</u> | <u>25 or Less Employees</u> | <u>26 or More Employees</u> |
|------------------------|-----------------------------|-----------------------------|
| January 1, 2017 | \$10.00/hour | \$10.50/hour |
| January 1, 2018 | \$10.50/hour | \$11.00/hour |
| January 1, 2019 | \$11.00/hour | \$12.00/hour |
| January 1, 2020 | \$12.00/hour | \$13.00/hour |
| January 1, 2021 | \$13.00/hour | \$14.00/hour |
| January 1, 2022 | \$14.00/hour | \$15.00/hour |
| January 1, 2023 | \$15.00/hour | |

Concurrent increases to minimum salary for exempt employees. In 2019, that's **\$49,920** for employers with 26 or more employees.

FREE COPY OF PAYROLL RECORDS

SB 1252 provides that employees have the “right to receive” a copy of their wage statements upon request. **Employers may no longer require employees to make or pay for copies of their payroll records themselves.** (See Lab. Code § 226.)

OVERTIME FOR AGRICULTURAL WORKERS

AB 1066, which was passed in 2016, went into effect on January 1, 2019 for employers with 26 or more employees **eliminating overtime exemptions for agricultural workers.**

Agricultural workers must receive overtime at 1.5 times the regular rate of pay for all hours worked in excess of 9.5 hours in a day or 55 hours in a week.

OVERTIME FOR AGRICULTURAL WORKERS

The threshold is reduced by 1/2 hour per day or 5 hours per week every year until January 1, 2022 when it will match the 8 hours per day or 40 hours per week requirements for overtime applicable to most other workers.

The timeline for compliance is delayed by three years for employers with 25 or fewer employees.

CAL-OSHA CITATIONS

Previously, Cal-OSHA was prohibited from issuing a citation more than six months after the “occurrence” of a violation.

AB 2334 provides, among other things, that an “occurrence” continues until (a) it is corrected, (b) Cal-OSHA discovers the violation, or (c) the duty to comply with the requirement that was violated no longer exists.

LACTATION ACCOMMODATION

Employers have been required to provide an employee with the use of a room or location, *other than a toilet stall*, in close proximity to the employee's work area for the employee to express breast milk in private. **AB 1976** replaced the term "toilet stall" with "bathroom" such that **no part of a bathroom can be used for lactation accommodation purposes.**

HUMAN TRAFFICKING TRAINING

SB 970 and **AB 2034** require certain employers to provide at least 20 minutes of training regarding **human trafficking awareness** to employees likely to come into contact with human trafficking victims. SB 970 requires training by **hotels and motels** by January 1, 2020. AB 2034 requires **transportation facilities** including rail and bus stations to provide similar training by January 1, 2021.

WOMEN ON CORPORATE BOARDS

By the end of 2019, **SB 826** requires all California publicly held companies to have **a minimum of one female on their Board of Directors**. And by the end of 2021, a minimum of 2 female directors if 5 total directors, or 3 female directors if 6 or more total directors.

Failure to comply will result in significant fines.

“ME, TOO”: SEXUAL HARASSMENT REDEFINED, ETC.

By way of **SB 1300**, the Legislature made several declarations regarding the application of harassment laws, including:

(1) Actionable harassment need only make it **more difficult to do the job.**

(2) A **single incident of harassment** is sufficient to create a triable issue regarding the existence of a hostile work environment.

“ME, TOO”: SEXUAL HARASSMENT REDEFINED, ETC.

(3) A *single discriminatory remark* may be relevant evidence of discrimination.

(4) The legal standard for harassment should **not vary by type of workplace.**

(5) Harassment cases are **rarely appropriate for summary judgment.**

“ME, TOO”: SEXUAL HARASSMENT REDEFINED, ETC.

SB 1300 also makes it unlawful for employers to require employees to sign, in exchange for a raise or bonus, or as a condition of employment: (1) a release of FEHA claims or (2) non-disclosure or non-disparagement agreements prohibiting disclosure of unlawful acts in the workplace.

This does not apply to negotiated settlement agreements.

“ME, TOO”: EXPANDED PERSONAL LIABILITY

While FEHA already provided personal liability for individuals who engaged in harassing conduct, **SB 1300** adds **personal liability for individuals who engage in retaliation** against anyone complaining of harassment.

SB 224 expands personal liability for sexual harassment to **elected officials, lobbyists, and entertainment industry directors or producers.**

“ME, TOO”: CONFIDENTIALITY IN SETTLEMENT AGREEMENTS

For settlement agreements entered into on or after January 1, 2019, **SB 820** prohibits provisions that prevent **disclosure of factual information relating to allegations of sexual misconduct.**

AB 3109 voids provisions that would prevent someone from testifying about alleged sexual harassment in an administrative, legislative, or judicial proceeding.

“ME, TOO”: PROTECTION AGAINST DEFAMATION CLAIMS

AB 2770 provides a privilege to harassment victims who make complaints, and to employers who make statements, regarding alleged harassment to administrative agencies. **Statements are only protected if made without malice and based upon credible evidence.**

“ME, TOO”: PROTECTION AGAINST DEFAMATION CLAIMS

AB 2770 also allows employers to inform a prospective employer, without risk of a claim for defamation, that **a decision not to rehire an employee is based upon a determination that the employee engaged in sexual harassment.**

“ME, TOO”: STATUTE OF LIMITATIONS ON CIVIL SEXUAL ASSAULT

AB 1619 enlarges the statute of limitations for a civil sexual assault claim from 3 years to **10 years** after the alleged assault or **3 years** after the victim discovered the injury, whichever is later.

“ME, TOO”: SEXUAL HARASSMENT PREVENTION TRAINING

SB 1343 changes several workplace training requirements, including:

Employers with at least 5 employees are required to provide sexual harassment training to **all employees, including non-supervisory employees.** Specifically, 1 hour of classroom or other effective interactive training to all non-supervisory employees and 2 hours to supervisory employees.

“ME, TOO”: SEXUAL HARASSMENT PREVENTION TRAINING

Employees are required to undergo training within six months of starting their jobs.

Seasonal or temporary employees (or any employees that will be employed less than six months) need to undergo training within 30 days or 100 hours, whichever comes first.

“ME, TOO”: SEXUAL HARASSMENT PREVENTION TRAINING



The new training must be provided by no later than **January 1, 2020**. The DFEH has taken the position that everyone must be trained in 2019, even if properly trained during 2018.

The bill also directs the DFEH to create online training modules that employees could use to fulfill the new requirements.



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