

Newsletter: November 2017



2018 HR Alerts

How Will You Respond?

As the calendar year is winding down, Leap Solutions Group is gearing up to prepare employers for the many new employment and labor laws that could impact your organization, your employees and your bottom line in 2018. Here, we highlight just a few imminent changes and provide insights and recommendations for addressing each proactively and confidently.

Ban the Box on Criminal History

Effective January 1, 2018, Assembly Bill 1008 makes it unlawful under the California Fair Employment and Housing Act (FEHA) for employers with five or more employees to ask applicants about prior convictions on job applications. According to the bill, it's illegal to inquire into or consider an applicant's conviction history until after extending a conditional job offer. At that time, employers may conduct a background check but are prohibited from considering, distributing or disseminating information related to prior arrests not

followed by convictions as well as any diversions and/or sealed, dismissed, expunged or eradicated convictions. Further, should an employer intend to deny a candidate a position solely or in part because of the candidate's conviction history, the employer must make a clear, individualized assessment as to whether that history has a direct and adverse relationship with the nature and specific duties of the job. The bill explains detailed guidelines for notifying the applicant of the intended decision, granting time for the applicant to respond (and possible additional time to dispute the decision and gather evidence) and making and presenting a final decision. (Certain specified positions, including criminal justice agency jobs, are exempt from this bill.)



What this could mean for you: Meant to help formerly incarcerated people support themselves and their families with gainful employment, AB 1008 restricts employers' abilities to make pre-hire and personnel decisions based on an individual's criminal history. Employers should immediately review and update applicant screening procedures, including revising all job applications to remove any boxes that ask about prior convictions or criminal history. You must also refrain from inquiring about criminal history during interviews. As an alternative, you may opt to request criminal history information in your offer letter. You are still entitled to conduct a background check on any candidate after an offer is made (and you might want to consider doing so as a matter of course if you don't already). However, should the results of an applicant's background check alarm you and make you reconsider hiring, we urge you to consult with Leap Solutions Group. We can help you perform the required individualized assessment, make any adjustment to your offer, and ensure that you remain in compliance throughout the process.

Salary History

Effective January 1, 2018, Assembly Bill 168 makes it unlawful for employers to ask an applicant (or the applicant's current or former employers)—orally or in writing, directly or indirectly—about prior salary, compensation and benefits. (Salary history may be discussed, however, if the applicant "voluntarily and without prompting" discloses it.) Employers may not use an applicant's prior history as a factor in determining whether to offer employment or what salary to offer. In addition, upon request of a job applicant, employers must provide the position's pay scale.

What this could mean for you: AB 168 aims to address pay inequalities. Employers should immediately review and revise all job applications to remove questions about previous salary or salary history. You must also refrain from inquiring about criminal history during interviews. This is an ideal time to conduct a market-based compensation analysis; Leap Solutions Group can

help you determine your compensation formula based on job, region, function and industry and develop or update pay scales and clear job descriptions. (Don't forget that 2018 also brings another increase in hourly minimum wage—as of January 1, for employers with 25 or fewer employees, minimum wage is \$10.50 per hour; for those with 26 or more employees, minimum wage is \$11.00/hour.)

Parental Bonding Leave

Effective January 1, 2018, the New Parent Leave Act (Senate Bill 63) requires California employers with 20-49 employees within a 75-mile radius to provide up to twelve weeks of unpaid, job-protected parental leave to bond with a new child within one year of the child's birth, adoption or foster care placement. To be eligible, employees must have more than twelve months (and at least 1,250 hours) of service with the employer during the twelve-month period prior to the leave. Employees are entitled to use any accrued paid time off, such as paid vacation and sick leave, during the parental leave. In addition, employers must maintain and pay for the employee's continued coverage under a group health plan at the level and same conditions that coverage would have been provided had the employee continued to work. If an employer employs both parents, and they are entitled to leave for the same birth, adoption or foster care placement, the parents' combined leave will be capped at twelve weeks. An employer may (but is not required to) grant simultaneous leave to both employees.



What this could mean for you: The New Parent Leave Act allows more Californians to take leave to bond with a new child without fear of losing their jobs. If you're an employer of 20-49 people and don't already offer this type of bonding leave, you will need to fully understand eligibility and conditions and how they might impact your employees and your organization. You'll want to develop and communicate clear policies and processes for facilitating and managing these new mandated parental leaves.

Paid Family Leave/State Disability Leave Expansion

For periods of paid family leave or state disability leave starting after January 1, 2018 (but before January 1, 2022), Assembly Bill 908 substantially increases the weekly benefit amount available under California Paid Family Leave (PFL) and State Disability Insurance (SDI) from the current 55 percent of earnings to either 60 percent (for higher wage earners) or 70 percent (for lower wage earners). AB 908 also eliminates the waiting period for PFL claims (but does not change the waiting period for SDI claims, which remains at seven days).

What this could mean for you: Employers should inform affected employees of their benefits and plan for any additional expenses. You'll also want to monitor for any potential changes to payroll deduction rates.

Immigration Worksite Enforcement

Effective January 1, 2018, Assembly Bill 450 prohibits employers from voluntarily allowing federal Immigration and Customs Enforcement (ICE) officials to enter nonpublic areas of the workplace without a judicial warrant or to access, review or retain employee records without a subpoena (with exceptions). AB450 also requires employers to specifically notify affected employees (in writing in the language the employer normally uses to communicate employment information with each) of any ICE inspection of I-9s or other employment records within 72 hours of receiving notice of the inspection. AB450 further prohibits employers from re-verifying a current employee's employment eligibility when not otherwise required by federal law.

What this could mean for you: While Governor Jerry Brown has made California a "sanctuary state," his landmark legislation does not prevent or prohibit ICE or the Department of Homeland Security from acting on federal immigration enforcement. What you can do as an employer is know your and your employees' rights and responsibilities and understand that some employees experience fear or concern. Most importantly, you must communicate thoroughly and effectively (and in writing) about any ICE inspection; to that end, the California Labor Commission will develop a template notice by July 1, 2018; until that time, employers are required to create their own written notices in accordance with the specific guidelines spelled out in AB 450 (Leap Solutions Group can help with interim notice writing and translation).

Notice Requirements

- **Human Trafficking.** California law currently requires certain types of employers (*including but not limited to* alcohol retailers, airports, emergency rooms and adult or sexually-oriented businesses) to post a specific notice concerning human trafficking and hotlines available for assistance. AB 260 extends this requirement to hotels, motels, and bed and breakfast inns. In addition, SB 225 requires the notice to state that an individual may text a particular number to access support and services.
- **Transgender Rights.** SB 396 requires employers to prominently post a poster, developed by the Department of Fair Employment and Housing, on transgender rights. (The bill also requires employers with 50 or more employees to include information on gender identity, gender expression and sexual orientation in prescribed sexual harassment prevention training for supervisors.)

Looking Ahead

- **Agriculture Overtime.** Beginning January 1, 2019, Assembly Bill 1066 will gradually lower the daily and weekly hours-of-work thresholds for paying overtime to agricultural employees. At the outset, employers will be required to pay agricultural employees 1-1/2 times their regular rate for all hours worked over nine in a day or over 55 hours in a week. (Employers of 25 or fewer employees will have a delayed phase-in starting January 1, 2022.) The thresholds will drop annually from there so that by year 2022 (2025 for smaller employers) agricultural employees will earn overtime wages on par with most other non-exempt employees.

Bottom Line

The HR professionals at Leap Solutions Group can demystify these and many other complicated new employment and labor laws for you and your HR staff, hiring managers and supervisors. We specialize in compliance; we stay continually up to date on federal, state and local requirements; and we have expertise in pay equity and compensation, management/employee training and handbooks, FEHC/FEHA, FMLA and much more. Moreover, as a small business ourselves, we appreciate how challenging it can be to do business amidst these ever-changing rules and regulations.

Count on Leap to guide you through the complexities of each new piece of legislation and provide the knowledge, tools and resources you need to respond efficiently, reduce legal risk, minimize expenses and achieve the peace of mind that comes with keeping your organization and your people safe, strong and successful.



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Our mailing address is:

1400 North Dutton Avenue, #15 Santa Rosa, CA 95401

707-527-0969

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