



November 2019 Newsletter

2020 HR Alerts: Get Ready, Employers!



The coming of a new year means the coming of new California employment and labor laws. As always, Leap Solutions is here to help you face them proactively and confidently. Our HR professionals have the knowledge, expertise and resources to inform and guide you through ever-changing legislation and empower your company to thrive in 2020 and beyond.

Independent Contractor Classification

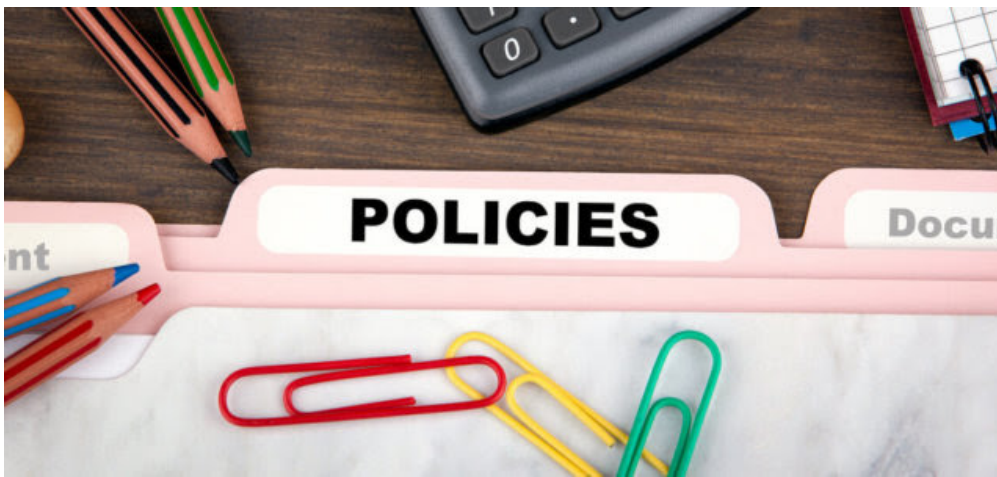
Effective Jan 1, 2020, and meant to address potential exploitation of workers misclassified as independent contractors, California Assembly Bill 5 (AB-5) prohibits employers from classifying workers as independent contractors unless they can conclusively demonstrate that the individuals meet *all three* conditions of a three-part “ABC” test.

What this could mean for you: While a number of licensed professionals, types of work and industries are exempted from AB-5, Leap Solutions encourages every employer to carefully review each independent contractor relationship and establish best practices for managing such relationships with full transparency. In some cases, employers may be required to reclassify independent contractors as employees (and provide all the rights, protections and benefits accorded to them as such). In all cases, you'll want to develop contract terms, rate negotiations, work structures and documentation guidelines for all independent contractor arrangements to ensure total compliance with the new law.

Employment Harassment and Discrimination Extension

Assembly Bill 9 also goes into effect on January 1, 2020, and broadens the time limit for filing harassment and discrimination claims under California's Fair Employment and Housing Act (FEHA). Known as the Stop Harassment and Reporting Extension (SHARE) Act, the legislation extends the deadline for employees to file allegations of unlawful workplace harassment, discrimination or civil-rights-related retaliation from one to three years.

What this could mean for you: Employers can protect themselves by renewing their commitment to inclusive, respectful, safe and responsive workplaces. Develop an easy-to-understand, comprehensive written policy for preventing harassment, discrimination and retaliation. Conduct thorough sexual harassment training for all-level employees, and establish protocols for complaints and for prompt, thorough, fair and impartial investigations. Put yourself in the best position to defend against any possible future claims by maintaining (and storing) careful and objective documentation of complaints, witness interviews, factual findings, conclusions and all steps and/or remedial actions taken.



Sexual Harassment Prevention Training Extension

Senate Bill 778 gives smaller employers a one-year extension on the sexual harassment prevention training deadline set forth in Senate Bill 1343 last year. Now, all employers with 5 or more employees must complete the training by January 1, 2021. Senate Bill 530 further clarifies that for seasonal or temporary employees who will work for fewer than six months, training needs to take place within 30 calendar days of hire date or within 100 hours worked (whichever is earlier) beginning January 1, 2021.

What this could mean for you: While the deadline is now January 2021 for smaller companies, you should implement the required trainings in 2020 in order to be compliant by that date. In light of the ongoing #MeToo movement, there's no better time than now to protect your company and your employees by actively fostering a harassment-free work environment.

“White Collar” Salary Thresholds

Effective January 1, 2020, the U.S. Department of Labor is increasing the salary threshold for exempting “white collar” employees from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (FLSA). The federal ruling increases the minimum salary level for exemption from \$455 per week to \$684, or \$35,568 per year. Up to 10% of the minimum salary may be commissions and incentive pay. The ruling also increases from \$100,000 to \$107,432 the total annual compensation required for employees to qualify under the shorter highly compensated employee (HCE) test. In California, exempt status requires at least two times the minimum wage. Effective January 1, 2020, the California threshold for employers of 26 or more employees will increase to \$54,080 per year (or \$1,040 per week).

What this could mean for you: Employers should take a look at the compensation levels of all salaried employees; if any are no longer in compliance with the new minimums, consider adjusting salaries accordingly or reclassifying employees as non-exempt. This is an ideal time to conduct a market-based compensation analysis; Leap Solutions can help you determine your compensation formula based on job, region, function and industry and develop or update pay scales and clear job descriptions.

Banning Arbitration as Condition of Employment

Assembly Bill 51 bans employers from requiring employees or applicants to waive any right, forum or procedure under California's Fair Employment and Housing Act (FEHA) or Labor Code as a condition of employment—prohibiting the use of mandatory arbitration as a condition of employment. The legislation further prohibits employers from retaliating or threatening employees who refuse to waive such rights. The bill applies to agreements entered into, modified or extended on or after January 1, 2020, and does not apply to post dispute settlements or negotiated severance agreements.

What this could mean for you: While we have no way of knowing how this new California legislation might be tested and whether it may be preempted by the Federal Arbitration Act (FAA), we do know that California employers can no longer *require* employees to sign pre-dispute mandatory arbitration agreements. If you would still like to offer arbitration agreements, be certain that they are not mandatory (or implied as mandatory), and they do not violate any employee rights. We recommend having any arbitration agreement reviewed by legal counsel.

Occupational Injury and Illness Reporting

Effective January 1, 2020, Assembly Bill 1804 requires employers to report serious injury, illness or death immediately by phone or through a dedicated online mechanism established by the Division of Occupational Safety and Health (Cal/OSHA). (Note: until that online mechanism is in operation, email notification will still be allowed).

Also effective January 1, 2020, Assembly Bill 1805 revises the definition of “serious injury or illness” in the workplace to remove the 24-hour minimum time requirement for qualifying hospitalizations, exclude hospitalizations for medical observation or diagnostic testing, include loss of an eye and amputation, and more. The bill also revises the definition of “serious exposure” as exposure to a hazardous substance in a degree or amount sufficient to create a realistic possibility of causing death or serious physical harm in the future.

What this could mean for you: The new reporting mechanism and expanded injury, illness and exposure definitions mean employers can expect to be required to contact Cal/OSHA more frequently than in the past. (Note: employers continue to be required to report “serious injuries and illnesses” immediately but no later than eight hours after the employer knows of the death or serious injury or illness.) We recommend companies set clear and thorough injury/illness/exposure event policies and procedures and communicate these and Cal/OSHA reporting requirements with all employees.



Lactation Accommodations

Beginning January 1, 2020, Senate Bill 142 requires businesses to provide reasonable break time and safe and clean lactation facilities for employees that meet minimum requirements (including access to electricity, a sink with running water and a refrigerator). It also requires that lactation facilities be built in new construction. The law ensures that employees receive written information about their rights to a safe and comfortable lactation space at work and their right to file a claim with the Labor Commissioner for any law violation.

What this could mean for you: The law does allow for exemptions by certain employers who can demonstrate undue hardship by causing the employer significant difficulty or expense. However, all employers will want to be creative and do everything possible to provide lactating employees with facilities that fully satisfy the law's requirements. Update your employee handbook with detailed written lactation policies, communicate to your employees how to request an accommodation, and document your timely response.

Update Your Policies

- **AB-1223:** Employers with 15 or more employees must provide an additional 30 days (beyond the initial paid 30 days) of unpaid leave for organ donations. Update the organ donation policy in your employee handbook.
- **AB-1554:** Toward the end of each benefit year, employers must provide two forms of notice to employees participating in a flexible spending account (including a health savings, dependent care or adoption assistance account) to inform them of upcoming withdrawal deadlines.
- **SB-188:** This legislation redefines race under California's Fair Employment and Housing Act (FEHA) to include "traits historically associated with race" including hair texture and protective hairstyles. Update your discrimination policy to include this protection.
- **SB-83:** Not effective until July 1, 2020, SB-83 increases paid family leave from six to eight weeks and creates a task force to develop a proposal for further job protections, including an increased wage replacement rate. Update your handbook accordingly.

Don't Forget!

January 1, 2020, also brings another increase in the hourly minimum wage:

- for California employers with 25 or fewer employees, the minimum wage will be \$12.00 per hour;
- for those with 26 or more employees, the minimum wage will be \$13.00 per hour.

Update your California Labor Law posters to reflect mandatory notice requirements from DFEH, Cal/OSHA and the Family Care and Medical Leave and Pregnancy Disability Leave (CFRA). **(Leap can help! Give us a call!!!)**

Looking Forward

The HR professionals at Leap Solutions can demystify these and many other complicated new employment and labor laws for you, your employees and your hiring managers and supervisors. Count on us to guide you through the complexities of each new piece of legislation and help you respond efficiently, reduce legal risk, minimize expenses and achieve the peace of mind that comes with keeping your organization compliant and your people safe, strong and successful.

Are You Ready to Leap into 2020?

Copyright © 2019 Leap Solutions Group, Inc., All rights reserved.

Thank you for subscribing to our Leap Solutions newsletter.

Our mailing address is:

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

707-527-0969