



Memorandum

TO: To Our Clients

FROM: Levinson Arshonsky & Kurtz, LLP

DATE: December 24, 2019

RE: New Laws Affecting Employers in 2020

The California Legislature and Governor Gavin Newsom were busy in 2019. The State Legislature sent 1,042 bills to Governor Newsom to sign. Of the 870 bills signed, many will directly affect California employers and employees. California laws that take effect in 2020 are discussed below. Please remember, only summaries are provided and legal advice should be sought prior to enactment of any new employment policy. All laws become effective January 1, 2020 unless otherwise noted.

Independent Contractors

Following the California Supreme Court's 2018 decision in *Dynamex Operations West v. Superior Court*, the requirement that properly classified independent contractors only perform work outside the scope of the company's business has caused many companies to reclassify their independent contractors as employees.

Legislative Relation to *Dynamex*: AB5 codifies and expands *Dynamex* beyond the Industrial Welfare Commission Wage Orders to the California Labor Code and Unemployment Insurance Code. AB5 creates several exemptions for specified occupations from the application of the draconian *Dynamex* analysis and instead applies the pre-*Dynamex* multifactor *Borello* test to those occupations.

Remember, if your industry is one of the chosen few included in the exemptions of AB5, it only provides application of a different analysis and does not mean the independent contractor relationship will be unchallenged. Businesses should examine any use of independent contractors for an assessment of the legality of the relationship in advance of a claim, audit, or other challenge.

Sexual Harassment

(AB9) Stop Harassment and Reporting Extension ("SHARE") Act.

This bill extends the statute of limitations for the state's Fair Employment and Housing Act (FEHA) to three years from one year. The bill will not revive "lapsed claims;" however, the effect on cases based on events *less* than one-year prior is unclear.

(SB1343) Sexual Harassment Training Requirement.

Effective January 1, 2019, employers with at least five employees were required to provide sexual harassment training to all employees by January 1, 2020. Specifically, employers with five or more employees were required to provide:

- (1) at least two hours of sexual harassment training to supervisory employees; and
- (2) at least one hour of training to non-supervisory employees.

SB778 amended the deadline, now requiring compliance by January 1, **2021**, but training previously conducted in 2018 or 2019 must still be conducted on two-year intervals.

Sexual Harassment Training for Specific Industries:

- Janitorial Workers: AB547 Requires the Director of the Department of Industrial Relations to convene a training advisory committee to assist in compiling a list of qualified organizations that janitorial employers must use to provide in-person sexual violence and harassment prevention training.
- Sexual Harassment Training for Construction and Temporary Employees: SB530 directs the Division of Labor Standards Enforcement (DLSE) to develop recommendations for an industry-specific harassment and discrimination prevention policy and training standard for use by employers in the construction industry.

Mandatory Arbitration Agreements

AB51 adds Section 432.6 to the Labor Code, outlawing mandatory employment arbitration of claims by current or former employees. AB51, as written, prohibits mandatory arbitration agreements for *any* discrimination claims covered under the Fair Employment and Housing Act (not just sexual harassment) and for *any* claims under the Labor Code (including wage and hour and other protections.) This was the same bill vetoed repeatedly by Governor Brown, as it was a clear violation of the Federal Arbitration Act. A legal challenge has recently been lodged against this legislation and is likely to be stayed prior to taking effect on January 1, 2020.

A new California law also scheduled to go into effect in January will penalize employers who do not pay arbitration fees within 30 days.

Lactation Accommodation

Under current state law, the location for an employee to express breast milk may not be a “bathroom” and must be in a private location in close proximity to the employee’s work area. The new law (SB142) adds the requirement that the room must be shielded from view and free from intrusion. It also requires the employee have access to a sink with running water and a refrigerator (or other cooling device) for storing milk.

Settlement Agreements

AB749 prohibits employment dispute settlement agreements from excluding an employee/claimant from future employment with the defendant employer (“no re-hire” provisions). Settlement agreements after January 1, 2020 may not contain a “no rehire” provision. However, an employer may still lawfully prohibit or restrict an employee from future employment if the employer has made a good-faith determination that the employee engaged in sexual harassment or sexual assault. Any settlement agreement violating this no re-hire prohibition shall be deemed void as a matter of law and against public policy.

Extension of Paid Family Leave Benefits

(SB83) Beginning on July 1, 2020, the maximum duration of Paid Family Leave (PFL) benefits individuals may receive from California’s State Disability Insurance program will extend from six to eight weeks. The new law becomes effective July 1, 2020, and remains effective through January 1, 2021, unless expanded by future legislation.

The Crown Act

(SB188) The Creating a Respectful and Open Workplace for Natural Hair (CROWN) Act, made California the first state to ban discrimination on the basis of hairstyles associated with race. The CROWN Act adds hairstyles that are closely associated with race to the class of protected racial characteristics under state law.

Labor Code Penalties

(AB673) Expands Labor Code section 210, which provides penalties for late payment of wages. This amendment to Section 210 authorizes an employee to pursue recovery through the Private Attorneys General Act (PAGA), adding additional basis for liability to PAGA claims.

California Consumer Privacy Act (CCPA)

This Act applies to businesses — whether or not located in California — with applicants, employees, or contractors who are California residents. Employers subject to the CCPA must satisfy detailed and onerous notice obligations, if they suffer a security breach, and may potentially face exposure to class action litigation.

AB25 excludes employees and prospective employees from the “Consumer” definition under the CCPA until January 1, 2021, so the above requirement will not yet apply in 2020.

Mileage Rate

The standard mileage rate pursuant to IRS standards will be reduced for 2020 from 58.0 cents per mile to 57.5 cents per mile.

Minimum Wage

Minimum Wage: The hourly minimum wage beginning on January 1, 2020 for the state of California is \$13.00 (\$12.00 for employers with 25 or fewer employees). For companies with employees working in Los Angeles city or unincorporated areas of Los Angeles County, the hourly minimum wage will increase on July 1, 2020 from \$14.25 to \$15.00 (employers with 25 or fewer employees have an extra year to comply, facing an increase to \$14.25 from \$13.25 on July 1, 2020). Please check local ordinances for other cities where employees perform services to determine the applicable minimum wage.

YEAR	FEDERAL (since 2009)	CALIFORNIA (effective January 1)		LOS ANGELES (effective July 1)	
		26 or more	25 or fewer	26 or more	25 or fewer
2017	\$7.25	\$10.50	\$10.00	\$12.00	\$10.50
2018		\$11.00	\$10.50	\$13.25	\$12.00
2019		\$12.00	\$11.00	\$14.25	\$13.25
2020		\$13.00	\$12.00	\$15.00	\$14.25
2021		\$14.00	\$13.00		\$15.00
2022		\$15.00	\$14.00		
2023			\$15.00		

Annual Salary Requirements For Exempt California Employees

As the state minimum wage increases, so too does the minimum salary requirement for properly classified exempt employees to retain their exempt status. As always, exempt employees are still required to perform exempt duties, but must also meet the salary minimum. The amounts required are set forth in the chart below:

ANNUAL SALARY REQUIREMENTS FOR EXEMPT CALIFORNIA EMPLOYEES

	2017		2018 (January 1 st)		2019 (January 1 st)		2020 (January 1 st)		2021 (January 1 st)		2022 (January 1 st)	
Annual Salary	<u>25 or Less</u>	<u>26 or More</u>	<u>25 or Less</u>	<u>26 or More</u>	<u>25 or Less</u>	<u>26 or More</u>	<u>25 or Less</u>	<u>26 or More</u>	<u>25 or Less</u>	<u>26 or More</u>	<u>25 or Less</u>	<u>26 or More</u>
		\$41,600	\$43,680	\$43,680	\$45,760	\$45,760	\$49,920	\$49,920	\$54,080	\$54,080	\$58,240	\$58,240
Weekly Salary	\$800	\$840	\$840	\$880	\$880	\$960	\$960	\$1,040	\$1,040	\$1,120	\$1,120	\$1,200

* Unless the Dept. of Labor increases the minimum salary to a level higher than the California State minimum.

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This material is for informational purposes only and does not constitute legal advice. If you have any questions regarding these new laws and applicability to your business, please contact:

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