

# 5, 4, 3, 2, 1: Happy New ... List Of Additional Employment Laws You Must Navigate!

*By Jason L. Morris*



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Just in case you didn't spend your holiday down time reading through all of those new California employment laws, here's a quick overview of six laws that became effective on January 1, 2018, that may impact your business.

**The Box Has Been Banned.** Employers are now prohibited from seeking information regarding an applicant's conviction history before the applicant has received a conditional offer of employment. This prohibition includes seeking such information on job applications using a "yes" or "no" question regarding past convictions, thus earning this new law and the campaign that led to it the "ban the box" title.

**Oh, And Don't Ask About Salary History Either.** In an expansion of the California Equal Pay Act, employers are now prohibited from seeking "salary history information" from job applicants and from relying on salary history information as a factor in determining whether to offer someone a job and what salary to offer. Additionally, employers are required to provide a pay scale for a particular position upon reasonable request.

**... And You're Still Not Permitted to Retaliate.** You already knew that you're not permitted to retaliate against whistleblowers (employees who engage in a protected activity such as reporting a violation to a state agency). California has now (some may say radically) changed the process for investigating and adjudicating whistleblower complaints. The Labor Commissioner is now authorized to initiate investigations in certain enumerated circumstances and may impose additional remedies in the event of a violation. Employers are subject to civil penalties, up to a maximum of \$20,000, for willfully refusing to comply with a final order of the Labor Commissioner, among other changes. Bottom line: the process will now be more costly, more punitive, and more difficult.

**What Happens In California Stays In California.** With one limited exception, employers may no longer require employees who "primarily" reside and work in California to agree to provisions in employment contracts that either (1) require adjudication of disputes outside of California or (2) specify that non-California law will apply to any such dispute. This prohibition applies to arbitration agreements as well as all other employment contracts. There is a limited exception when an attorney represents an employee or applicant.

**FMLA/ CFRA Light.** As you know, the federal Family and Medical Leave Act (FMLA) and its California counterpart, the California Family Rights Act (CFRA), apply to employers with 50 or more employees and provide unpaid, job-protected leave to eligible employees for various qualifying reasons. Now, employers with 20 to 49 employees are subject to a similar (though not identical) California law called the New Parent Leave Act. Under this



new law, covered employers must provide eligible employees up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement, and must guarantee employment in the same or comparable position upon return from such leave. Unlike the FMLA and/or CFRA, however, the New Parent Leave Act *does not* provide leave to care for family members with serious health conditions or for an employee's own serious health condition, pregnancy disability, or family members' military deployment or injuries.

**Same Sexual Harassment Prevention Training, More Topics.** As you know, employers with 50 or more employees are required to provide at least two hours of sexual harassment and prevention training to all supervisors within six months of hire, and retrain all supervisors every two years thereafter. Now, employers are required to include in such training the prevention of harassment and discrimination based on gender identity, gender expression, and sexual orientation. But wait, there's more! This new law comes with a host of other requirements you may not be currently training on, including that (1) sexual harassment training include practical examples of harassment on these three new bases and that it be provided by someone with expertise in the area of harassment and discrimination law and prevention, and (2) employers display additional posters and distribute information sheets to all employees, among other new requirements.

As everyone who attended our Newmeyer & Dillion's 2018 California Employment Law Legislative Update knows, these are just some of the new laws for 2018 that will impact your business and may require changes to your policies, contracts, and handbooks.

We'll keep you posted regarding new changes in California law that impact your company, and please contact us with any comments or questions about these or other new employees issues.

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