

POLITICO ALERT

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California Legislature Ramps up Laws to Protect Workers – Employers Beware

We will soon be issuing a comprehensive "End of Year" legislative report on the new California laws impacting the construction industry and taking effect in the new year, but we wanted to provide some initial information on several employer specific related measures that will also go into effect January 1, 2018. The Democrats who hold a 2/3 majority in the state legislature have become hyper sensitive to the actions of the Trump administration and as such, they have pushed a high volume of bills designed to protect employees and migrant workers. Some of those measures will have a direct impact on contractors. Construction employers will need to review existing policies and forms in preparation for compliance. Contractors may also want to inform all administrative and supervisory personnel about these new laws, and consult legal counsel for further recommendations and direction.

Prior Salary History Prohibitions (AB 168)

This measure prohibits all California employers from asking applicants about their previous salary history. Applicants may provide that information voluntarily, and employers can then use the information to determine a salary, but employers are no longer allowed to request that information.

Immigration Worker Protection (AB 450)

This bill was a companion measure to SB 54 which made California a "sanctuary state." Under AB 450, California employers are prohibited from allowing immigration enforcement agents (1) to access non-public areas of a workplace without a judicial warrant, or (2) to access, review, or obtain employee records without a subpoena or court order. The only exceptions to item 2 are review of Forms I-9 and other documents when Immigration & Customs Enforcement has provided a Notice of Inspection, or any other instances where federal law requires access to documents. The new law also contains a new employee notice requirement for certain immigration enforcement activities, and there are new statutory penalties that can be assessed by the Labor Commissioner or Attorney General.

Criminal History Inquiry Restrictions - "Ban the Box" (AB 1008)

AB 1008 prohibits public and private employers with at least five employees from asking job applicants about criminal convictions until after they have made a conditional offer of employment. If a job is then denied based on criminal history, the employer must make an individualized assessment and offer the applicant a chance to respond. We were successful in garnering amendments to the bill to ensure that the law does not apply to situations where

state, federal, or local law either requires an employer to conduct criminal background checks or restricts employment based on criminal history.

Joint Liability for Prime Contractors on Private Projects (AB 1701)

AB 1701 was a top priority of the California State Building and Construction Trades Council and perhaps the most contentious industry measure of the year. The new law extends joint and several liabilities for prime contractors to privately funded construction projects, on contracts entered into on or after January 1, 2018. Under the provisions of the bill, much like on public works, prime contractors will be liable for unpaid wages and fringe benefit payments (including any interest owed, but not penalties or liquidated damages) for subcontractors at any tier. Subsequently, the law allows prime contractors to request relevant payroll records. Enforcement actions can be brought from the Labor Commissioner, union trust funds, or joint labor-management cooperation committees. In an effort to mitigate any financial strain on subcontractors, we were able to secure amendments to ensure that progress payments must be paid timely and in accordance with current law.

Expanded Parental Leave (SB 63)

Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) are Federal and State laws that typically run concurrently. These laws require an employer to provide up to 12 weeks of unpaid yet job-protected leave to bond with a new child. Employers with 50 or more employees are already covered by FMLA/CFRA. SB 63 expands the requirement to provide parental leave to employers with 20 or more employees. Employees are eligible if they have (1) more than 12 months of service with the employer, and (2) at least 1,250 hours of service with the employer during the previous 12 month period. If both parents work for the same employer and are eligible for leave, they are limited to a combined total of 12 weeks, and the employer may (but is not required to) grant them leave simultaneously. Leave is permitted within one year of the child's birth, adoption, or foster care placement. SB 63 does not provide any other protected leave for any other purposes.