NELSON HARDIMAN
HEALTHCARE LAWYERS

Summary of California Employment Law Updates

We are providing you a courtesy update regarding changes in California employment law effective January 1, 2018. Please note that this is an informational notice only and not legal advice on these matters; please contact us if you need additional information.

With the New Year, California employers have new obligations, especially as pertains to hiring questions and new rules regarding transgender employees. In this latter regard, please find a link to the mandatory poster for transgender employees' rights prepared by the Department of Fair Employment & Housing (DFEH) that you are required to display where employees can easily read it.

Salary History Inquiry Prohibited

- Assembly Bill 168 takes effect on January 1, 2018 and adds Labor Code Section 432.3, prohibiting all employers from seeking salary history information about an applicant for employment.
- Specifically, employers:
  - cannot rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant;
  - cannot orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment;
  - must, upon reasonable request, provide a job applicant with the pay scale for the position being sought; andmay consider salary history information in determining the salary for an applicant that is *voluntarily and without prompting* disclosed by a job applicant; however, the new law affirms California's existing prohibition against using salary history itself to justify pay disparity.
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"Ban the Box" Law Limits Criminal History Inquiry

- Effective January 1, 2018, Assembly Bill 1008 introduced a California-wide "Ban-the-Box" law and amended the California Fair Employment and Housing Act (FEHA) by adding the new Government Code section 12952, which affects all California employers with *five or more employees*.
- Specifically employers:
  - cannot include any question that seeks the disclosure of an applicant's conviction history on any employment application before the employer makes a conditional offer of employment to the applicant;
  - cannot inquire into or consider the conviction history of the applicant until after the employer has made a conditional offer of employment to the applicant;
  - cannot consider, distribute, or disseminate information about arrests not followed by conviction (with certain exceptions), referral/participation in pretrial/post-trial diversion programs, or convictions that have been sealed, dismissed, expunged, or statutorily eradicated while conducting a conviction history background check in connection with any application for employment;
  - may consider conviction history *after* a conditional offer is made, but if conviction is a factor in denying employment, the employer must conduct an individualized to assessment of whether the conviction has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position; andmust follow certain written notice requirements to the employee if conviction history is a factor in denying employment.

Minimum Wage Increases

- Effective January 1, 2018, minimum wage for employers with *26 or more employees* increases to $11.00 per hour (from $10.50); and the minimum wage for employers with *25 employees or fewer* increases to $10.50 per hour (from $10.00). Employers should also be aware of more stringent local requirements (e.g., minimum wage in the city of Los Angeles is $12.00 per hour for employers with *26 or more employees*, with certain exceptions).
- Increased hourly wage also means the minimum annual salary threshold for "exempt" status under California law increases to $45,760 (from the 2017 threshold of $43,680) for employers with *26 or more employees*. Businesses with *25 or fewer employees* have an extra year to comply with each increase.

Unpaid Family Leave for Small Business Employees

- Effective January 1, 2018, the New Parent Leave Act extends unpaid family leave protections to businesses that directly *employ 20 or more persons* to perform services for a wage or salary.
- Specifically, the New Parent Leave Act:
  - prohibits employers from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, upon request, to take 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.
  - prohibits employers from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave.

Expanded Transgender Protections; Poster Requirement

- Effective January 1, 2018, *employers of five or more employees* must display a new poster by the Department of Fair Employment & Housing (DFEH) titled "Transgender Rights in the Workplace."
- The poster address the following issues:
  - What does "Transgender" mean and what is a "Gender Transition"?
  - What is an employer allowed to ask an employee?
  - How do employers implement dress codes and grooming standards?
  - What are the obligations of employers when it comes to bathrooms, showers, and locker rooms?