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It's time for California employers to get their check-ups

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Are you ready for these new laws that take effect January 1?

Recently, Gov. Gavin Newsom (D) signed several measures into law providing for new rights and protections for California employees. The following provisions take effect January 1:

- **AB 5** codifies the landmark *Dynamex* decision, but it goes even further than *Dynamex*. AB 5 requires that the so-called "ABC Test" will be used to determine whether a worker providing services in California is an "employee" for purposes of the California Wage Orders, the Labor Code, and the Unemployment Insurance Code.

Impact: Current classification of workers as independent contractors in California may be subject to legal challenge and risk. Companies with "independent contractors" in California may need to reclassify them as employees, either directly or through staffing agencies.

- **AB 9** extends the statute of limitations for claims of discrimination, harassment, or retaliation filed with the California Department of Fair Employment and Housing. Currently, employees have one year to file, but starting January 1, they will have three years.

  Impact: Employers with California operations will need to retain records longer. Therefore, they will also need to ensure that the appropriate persons in Human Resources understand their new record retention obligations. In addition, unresolved claims will have a longer "lease on life."

- **AB 25** amends the California Consumer Privacy Act, which gives consumers rights with regard to personal information held by businesses. The CCPA has been clarified to provide that personnel data collected in the course of the application process or during employment is exempt from most provisions -- but only until January 1, 2021. The requirement that employers (as "businesses") make disclosures to “consumers” concerning the type of personal information that is being collected and the purpose for which it will be used will still take effect January 1, 2020.

  Impact: Most California employers could be caught off guard and incorrectly assume that they have a one-year reprieve from the CCPA. Our data privacy attorneys can help employers get into compliance, and stay there.

- **AB 51** seeks to make workplace arbitration agreements unlawful. Specifically, it prohibits employers from requiring an applicant or an employee to "consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or [the Labor] code." It applies to all arbitration agreements that are entered into, modified, or extended on or after January 1.

  Impact: This law will surely be subject to legal challenge. In the meantime, employers with operations in California should consult with employment counsel regarding whether and how to continue to use arbitration agreements in California.

- **AB 749** prohibits provisions in settlement agreements requiring that the employee not seek reemployment with the employer. The statute applies to settlement agreements entered into on or after January 1.

  Impact: The "promise not to seek reemployment" is a very common provision in settlement agreements, so this change is significant. However, employers with California operations should consult with counsel about the exceptions that apply. For example, layoff situations may not be covered.

- **AB 673** gives employees the right to recover civil penalties for late paid wages under Labor Code Section 210. These civil penalties were previously enforceable only through an action by the Labor Commissioner. Now, the employee is entitled to recover $100 for each initial violation, $200 for subsequent violations, plus 25 percent of the amount unlawfully withheld. AB 673 does not allow an employee to recover penalties under both Section 210 and the Private Attorney's General Act. The employee has to choose one or the other.

Impact: Failure to pay wages in a timely manner (whether on regular payroll cycles, at termination, by commission, etc.) will now become costlier because there is now an incentive for employees to seek penalties for any late paychecks.

- **SB 142** expands California's lactation accommodation requirements, including requirements that the lactation room or location be "safe, clean, and free of hazardous materials," and
  - Contain a flat surface for a breast pump and personal items,
  - Contain a place to sit,
  - Provide access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump, and
  - Provide access to a sink with running water and a refrigerator (or cooling device or cooler) in close proximity to the employee's workspace.

  Impact: Many employers do not address lactation issues until they are asked about it by an employee returning from maternity leave. Are your operations in California able to provide all that the law requires? In particular, do your non-office facilities have access to electricity, sinks, flat surfaces, and privacy?

If you have California operations, this is the time to get a "legal checkup" about how to be ready for 2020 and beyond. For assistance with any of these new laws, please contact an attorney in Constangy's Los Angeles, Orange County, or San Francisco offices.

Tags: Arbitration, Arbitration Agreements, California Consumer Privacy Act, California Fair Employment and Housing Act, CCPA, Dynamex Operations West

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