What We’ll Cover

An Overview of New Laws for 2015

1. Wage & Hour
2. Cal OSHA
3. Harassment & Discrimination
4. Potpourri
5. Questions
6. Paid Sick Leave
7. Recap and Questions

Introduction & Disclaimer

CEA – California Employers Association

- Over 75 years of HR support for employers
- On-site, training, compliance, HR Hotline
- Subject Matter Experts

Consult an attorney about any issues of legal significance to you.

This presentation should not be relied upon as legal advice.
• **AB 241**: DOL Update
• **AB 1897**: Staffing Agencies & Labor Contractors
• **AB 2074**: Liquidated Damages
• **AB 1723**: Waiting Time Penalty
• **AB 2288**: Child Labor Protection Act

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**Domestic Workers lawsuits**

• **2014, AB 241** required employers (even private households) who use personal attendants, nannies, housekeepers and private health care aides to pay overtime for more than 9 hours in a workday or 45 hours in a workweek.
• Before AB 241 attendants were exempt from overtime.
• Law still does not require meal and rest breaks.
• **January 1, 2015 DOL changed FLSA guidelines. More generous. Overtime for 9 hours in a workday or 40 hours in a workweek for personal attendants.**
AB 1897 – Staffing Agencies

Holds companies accountable for wage theft and other abuses when they use staffing agencies and labor contractors. (Soex West Textile Recycling story)
• Employers now have joint liability for wage and hour laws and workers’ comp requirements
• Does not apply to employers with:
  – 25 or fewer employees
  – 5 or fewer workers from labor contractors working at one time
  – White collar exempt workers
  – Collective bargaining agreements (union supported)

AB 2074 – Recovery of Wages: Liquidated Damages

• In 2014 the state allowed liquidated/double damages when an employee didn’t receive minimum wage
• 2015 AB 2074 Clarifies that the statute of limitations for liquidated damages is the same as the underlying wage claim
• Example: Wage and hour claims have a 3 year statute of limitations, so do the liquidated damages
• Be careful with those final paychecks

AB 1723 – Labor Commissioner and Waiting Time Penalties

3 Minimum wage dispute resolutions:
– Labor Commissioner Claims
– Civil Actions in Court
– Labor Commissioner Citations
• In the past, an employee had to file and request waiting time penalties in order to receive them
• Now, the LC can ask for waiting time penalties on behalf of an employee. (Expanded authority)
• Only if there is willful failure to pay less than minimum wage
Treble (3x) damages for employers who discriminate against a person for filing a LC claim that occurred when the employee was a minor.

- The statute of limitations is "tollied" (suspended) on a minor’s claims until the minor turns 18
- Available whether a claim is filed before or after the age of 18

AB 2288 – Child Labor Protection Act of 2014

Cal/OSHA and OSHA

- AB 1634: Cal/OSHA
- AB 326: Emailing Injuries
- New OSHA rules

AB 1634 – Postponing Penalties

Removes the option of postponing an abatement period for employers with serious violations.

- Prior law allowed employers to contest OSHA citations – employees were working in unsafe conditions during the investigation period
- Prohibits OSHA appeals board from modifying (or waiving) civil penalties for serious violations until they are fixed
AB 326: Emailing of Injuries

- Amends the Labor Code
- Prior law required an employer to make an immediate report by telephone or telegraph of every case involving an employee’s serious injury or illness or death to the division.
- AB326 requires every employer to make an immediate report by telephone or e-mail of every case involving an employee’s serious injury or illness or death to the Division of Occupational Safety and Health.

New OSHA Rules

- As of 1/1/15 employers must notify OSHA within eight (8) hours when an employee is killed on the job.
- Must notify OSHA within 24 hours if an employee suffers a work-related hospitalization, amputation or loss of an eye.
- Bakeries, auto dealers, liquor stores, and museums must now track on the job injuries.

Harassment and Discrimination

- AB 1443: FEHA protection for Interns and Volunteers
- AB 1660: CA New Drivers License
- AB 2751: Unfair Immigration Practices and Penalties
- AB 2053: “Abusive Conduct” training
- AB 802 & AB 2617: Arbitration Changes
AB 1443 – Interns and Volunteers

Expands FEHA protection against discrimination and harassment to unpaid interns and volunteers

• No discrimination in the selection, termination, training, or other treatment of unpaid interns and volunteers
• Does not change the rules regarding the very limited exceptions for unpaid interns*

*CEA Factsheet

AB 60 – CA Drivers License

AB 60, 2013, Required DMV to issue driver licenses to applicants who are unable to submit satisfactory proof of legal presence in the U.S.

• Applicants must meet all other qualifications for licensure and proof of identity in California
• Employers cannot discriminate against these individuals and they are not valid documentation for I-9’s
• Be careful about documentation on I-9’s. Can only require drivers licenses if required by job

New CA Drivers License

• (Front) “Federal Limits Apply”
• (Back) “Not valid for official federal purposes.”
Current law prohibits an employer from retaliating against an employee who files with DLSE. 10k/violation

This Code:
1. Clarifies that the fines go to the employee
2. Prohibits adverse action when an employee updates personal information based on “a lawful change of name, social security number or federal employment authorization document”
3. Authorizes victims who are threatened to bring civil actions

AB 1825 required employers with 50 or more employees to provide 2 hours of sexual harassment prevention training to all supervisors.
- AB 2053 adds an “abusive conduct” training component to AB 1825
- “Action taken, with malice, that a reasonable person would find hostile, offensive and unrelated to an employer’s legitimate business interests…” CEA’s trainings are up to date!

AB 2617: Employers can’t require employees to sign a mandatory arbitration agreement that waives their right to sue for violence or hate crimes.
AB 802: Requires transparency in arbitration. Requires posting of sensitive information including the amount of the award.
- These laws are broad and reduce confidentiality – Make arbitration less attractive for employers
- Talk with legal counsel regarding handbooks!
Minimum Wages

- 1/1/15 San Francisco $11.05  ($12.25 on May 1, 2015)
- Oakland $12.25 on March 2, 2015
- Reminder: California’s minimum wage of $9/hr. (7/1/14) will increase to $10/hr. 1/1/16
- Current California exemption salary test is $37,700. Will be $41,600 on 1/1/16
- Exempt employees must meet new minimum wage laws

New NLRB Ruling

- Dec 2014 ruled that employees who have access to an employer’s email system as a part of the job may use the email (during non working hours) to communicate about wages, hours, working conditions, and union issues. Purple Communications
- Expected to be challenged in federal courts
As of 1/1/15 the standard mileage rates for the use of a car, van, pickup truck or panel truck will be:

- **Business Related Travel:** 57.5 cents/mile (up from last year)
- **Medical or Moving Purposes:** 23 cents/mile (down half a cent)
- **Charitable Use:** 14 cents/mile (no change)

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**San Francisco Fair Chance Ordinance**

- August 2014: Restrictions on job advertisements
- No questions regarding conviction history on job applications (until live interview or unconditional job offer)
- Employers must provide FCO notice (8/14)
- Employer must conduct “individualized assessment” if an employment decision will be made on unresolved arrest or conviction history

[http://sfgsa.org](http://sfgsa.org)

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**AB1650 – Fair Chance Employment Act (Ban the Box)**

State contractors may not ask about conviction history in initial hiring process of construction workers

- Employer can’t ask applicant for construction-related employment to disclose information concerning the conviction history of the applicant at the time of an initial employment application
- Exempt for union positions, or those which required by state or federal law to conduct a history background check, or to any contract position with a criminal justice agency
Poster Questions

- Are your 2015 posters displayed in a prominent place?
- Have you filled in the blanks?
- Have you posted your IWC wage orders?

**2015 changes:**
- Paid Sick Leave
- Changes to Cal/OSHA

CEA's Poster Guarantee Program will automatically provide you with a replacement when mandatory changes are made!

Cell Phones

**Cochran v. Schwan’s Home Service, Inc.**

- Employer must reimburse an employee who uses personal cell phone for work related calls
- Must pay a “reasonable percentage” of an employee’s phone bill, even if the employee did not incur any additional expense

> LC2802(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…

- Review your cell phone policies

Leaves and Benefits

- **SB 1034:** Waiting Requirements for ACA
- **AB 2536:** Time off for Emergency Duty
- **AB 1522:** Mandatory Paid Sick Leave
Employers may not apply a waiting period that exceeds 90 days after the start of employment.
- Consider a 60 day waiting period
- Review employee handbooks

Provisions of the new waiting period regulation:
- Employers may not apply a waiting period that exceeds 90 days. A waiting period is the length of time that must pass before coverage for an individual, who is otherwise eligible to enroll, can become effective.
- Employers may require new employees to complete an orientation period as long as it is no greater than 30 days. Any waiting period would begin to run only after completion of the orientation period. It is the employer’s responsibility to administer and track these requirements.

Expands definition of “emergency rescue personnel” to include employees who are officers, employees or members of a disaster response entity sponsored by the state
- Health care providers must notify employer
- Do you need to update your handbook?
California’s New Paid Sick Leave Law – AB 1522

Healthy Workplaces, Healthy Families Act of 2014

• Purpose – 3 days off for all employees
  – To address their own health needs and health needs of their families
• Protect employees from losing their jobs when they use sick days

We’ll help you understand . . .

• Who the law impacts
• When the law goes into effect
• What the law mandates
• What you need to do
• Some options

Who Is Impacted?

All employers!
“Any person employing another under any appointment or contract of hire and includes state, political subdivisions of the state, and municipalities.”
All Employees

All employees who work in California for 30 or more days within a year of beginning employment

With some exceptions . . .

Employee Exceptions

All employees except:

• Those covered by a collective bargaining agreement (CBA) that provides for paid sick days, binding arbitration and other requirements
• Construction employees under a CBA
• Providers of in-home services under California law (not private)
• Certain air carrier and flight personnel provided time off equal to the law

And Includes . . .

• Full-time, Part-time
• Exempt, Non-Exempt
• Seasonal, Temporary, On-Call
• Outside Salespersons
• Paid Interns/Externs
• Even out-of-state employees
When Does This Happen?

January 1, 2015
- Poster – Labor Commissioner
- Wage Theft Notice to nonexempt employees

July 1, 2015
- Begin providing paid sick leave benefit
- Recordkeeping

What the Law Mandates
3 Options

1. Accrual Method
2. Annual Grant Alternative (*lump sum*)
3. Employer Policy

Option 1 - Accrual Method

- Beginning 7/1/15 or 1st day of work if later
- Employees earn 1 hour paid sick leave for every 30 hours worked (train example)
- All hours worked – including overtime. (not holidays)
- Exempt employees assumed as 40 hours/week
- May cap at maximum of 48 hours or 6 days
- Accrued, unused time carried over to following year – no use-it or lose-it policy
- Not paid out at termination
Option 2 - Annual Grant Alternative

- Lump sum / front loading / annual grant plan
- Employer grants at least 3 days or 24 hours of paid sick leave at beginning of each year
- No accrual or carryover required
- No tracking of hours by employer

Option 3 – Employer Policy

- PTO policy so long as it:
  - Mirrors the accrual, carryover and use requirements in AB 1522, or
  - Provides employees with at least 3 days or 24 hours of paid sick leave each year, regardless of the actual accrual rate

Use

- No later than 90th day of employment
- Employee determines how much time to use
- Can limit use to increments of 2 hours (or less)
- Can limit use to 3 days or 24 hours per year
- Can require reasonable advance notice
- Law is silent on medical certification
- Cannot require employee to find replacement
The diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s “family member”

For an employee who is a victim of domestic violence, sexual assault, or stalking, to seek aid, treatment, or related assistance

Includes:
- Child
  - Biological, adopted, or foster child
  - Stepchild
  - Legal ward
  - Child to whom employee stands in loco parentis
    - Regardless of age or dependency status
- Parent
  - Biological, adoptive or foster parent
  - Step parent
  - Legal Guardian of employee or employee’s spouse or registered domestic partner
  - Person who stood in loco parentis to the employee when employee was a minor child
- Spouse or registered domestic partner
- Grandparent/Grandchild/Sibling

Same wage rate as earned during regular hours

Different wage rates in preceding 90 days:
- “Divide employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay period of the prior 90 days of employment.”

Must pay no later than payday for the next regular payroll period after the sick leave is taken
Restoration Clause

If an employee separates (leaves the company) and is rehired within 1 year of separation you must restore the accrued and unused sick leave.

Prohibitions

• Don’t deny right to use accrued paid sick leave
• Don’t threaten to demote, discipline, suspend, or terminate employee who requests or uses accrued paid sick leave

Recordkeeping

Keep records for 3 years that document:
– Hours worked (not new)
– Paid sick leave accrued and used; and
– Advancement of sick days if you allow
Penalties

- Failure to post poster
  – $100 per offense
- Unlawful withholding of sick days
  – $ amount of paid sick days withheld x 3
- Harm to employee
  – $50/day
- Civil action
  – $$$

Existing Sick Leave or PTO Policy

Remember Option 3. Not required to provide additional paid sick leave if existing paid leave or PTO policy:

- Meets accrual, carryover and use requirements of law; or
- Provides at least 3 days or 24 hours of paid sick leave (or equivalent paid leave or PTO) per year of employment, calendar year, or 12 month basis
- And makes the paid leave available for the same purposes and under the same conditions as in the law.

What You Need to Do For Existing Policies

- Check accrual rates
- Check eligibility requirements
- Check reasons for use requirements
- Define “family member”
- Revise pay calculation
How About Local Sick Leave Ordinances?

- Must follow the law that provides more generous rights
- San Francisco (February 2007)
  - More generous on amount of leave
  - California law more generous on rehire provisions

Our Recommendations

- Don’t change anything yet
- Use this information as education
- CEA Webinar on February 4, 2015
- Think about what you want to do
- Wait for direction from our legal counsel
  – We’ll let you know!!

What Else?

- Post the Paid Sick Leave poster
- Begin using new Wage Theft Notice now
- Review your record retention policies and update if required
- Decide whether to update pay stub statements or provide separate notice every payday
- Train managers and supervisors
The following applies to the employee identified on this notice:

1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave. (Accrual method)

2. Accrues paid sick leave pursuant to the employer’s policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246. (Accrual +)

3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period. (Lump sum)

4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption)

Fast & Furious Recap

- Determine who needs AB1825 Harassment Awareness training – schedule the training
- Discuss Paid Sick Leave Options – 2/4/15 webinar
- Review your employee handbook:
  - AB 2536 – Emergency Duty Leave
  - AB 1522 – Paid Sick Leave
  - Email Policies
  - AB 1443 – Unpaid Interns and Volunteers
  - Arbitration – consider removing
  - SB 1034 – Waiting periods for Health Care
  - SB 1360 – Recovery “cool down” periods

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