



STOKES WAGNER

ATTORNEYS AT LAW

2018/2019 EMPLOYMENT LAW RECAP

As employers continue to make headway in 2019, here is a summary of key federal and state employment laws that were passed in 2018 or will go into effect in 2019. We hope that this chart will help employers navigate the everchanging federal, state, and local laws that may impact their businesses.

As always, contact Stokes Wagner with any questions. Please let us know if we are missing a state that applies to your business!

FEDERAL LAW

<i>Topic</i>	<i>Summary</i>	<i>Effective Date</i>
Back-of-House Tip Pool	Back-of-house staff employed in states without tip credits may now participate in tip pools. Click here for more details.	Apr. 6, 2018
New Notices for Employment Background Notices	Employers must use a new “Summary of Your Rights Under the Fair Credit Reporting Act” when conducting employment background checks, pursuant to the Fair Credit Reporting Act. Click here for more details.	Sept. 13, 2018
20% Tip Credit Rule [applies to only AL, AZ, CA, HI, ID, MT, NV, OR, WA]	Employer cannot take a tip credit where a tipped employee spends over 20% of their time engaging in activities that are related to their work but do not directly result in the generation of tips. Click here for more details.	Sep. 18, 2018
W-2 Requirements	The Social Security Administration will now assess penalties against employers who file Form W-2s with inaccurate employee information. Click here for more details.	Jan. 1, 2019
Independent Contractors	The National Labor Relations Board eases path for employers to classify workers as independent contractors. Click here for more details.	Jan. 25, 2019

Topic	Summary	Effective Date
FRCA Background Check Disclosures [applies to only AL, AZ, CA, HI, ID, MT, NV, or WA]	Employers in these states must check and ensure that they provide applicants with separate and standalone background check disclosures that are entirely distinct from application paperwork. The disclosures must not include disclosures mandated by other states or any other unnecessary information that may confuse an applicant.	Jan. 29, 2019
EEO-1 Reporting	2018 EEO-1 reports are due no later than May 31, 2019. The EEOC will open the online portal/login for employers to submit reports in early March. The delay is due to the recent government partial shutdown. The EEOC did not make any substantive changes from last year so the same rules for filing the 2018 reports apply from last year.	May 1, 2019 [deadline]

CALIFORNIA

Topic	Summary	Effective Date
WORKPLACE LAWS		
Workplace Safety [OSHA] [AB 233410]	Allows Cal/OSHA to issue recordkeeping citations for errors to injury logs, for up to five years.	Jan. 1, 2018
Flat-Sum Bonuses and OT Calculation [Alvarado v. Dart Container Corporation of California]	When calculating how a flat sum bonus should be factored in an employee's regular rate of pay, the employer should divide by the number of non-overtime hours worked by that employee.	Mar. 5, 2018
Independent Contractors	California Supreme Court adopts the "ABC Test" which sets stricter standards for employers to classify individuals as independent contractors rather than employees. Click here for more details.	Apr. 30, 2018
Off-the-Clock Work	Employers may now be on the hook for paying employees for time that was once considered 'de minimis' [hard to capture in a time system and administratively difficult to record]. Click here for more details.	Jul. 26, 2018
Minimum Wage Notice	There is a new workplace Minimum Wage Notice for all California employers. Click here for a link to the poster.	Jan. 1, 2019
Lactation Accommodations [AB 1976]	Employers must now provide a location other than a bathroom to express milk. [AB 1976] Click here for more details.	Jan. 1, 2019
Paid Family Leave [AB 2587]	CA eliminates an employee's seven-day waiting period when applying for Paid Family Leave benefits.	Jan. 1, 2019

Topic	Summary	Effective Date
Wage Record Receipt	Current and former employees may request a copy of their wage records that they can keep.	Jan. 1, 2019
EDD Pamphlets	Employers must provide updated “Notice to Employees” poster [DE 1857A] and “For Your Benefit: California’s Program for the Unemployed” pamphlet [DE 2320] to its employees. Click here for more information.	Jan. 1, 2019
More Stringent Background Check Requirements	Employers are reminded to comply with two background check notice requirements: [1] provide stand-alone notices that are [2] “reasonably understandable” and “readily noticeable” to the prospective employee. Employers may not provide employees notices that include extra material, such as state disclosure requirements, that goes beyond basic and clear authorization language.	Jan. 29, 2019
On-Call Employees and Reporting Time Pay <i>[Ward v. Tilly’s Inc.]</i>	Employers must now pay employees “reporting time pay” when employees are required to call their worksite prior to a scheduled on-call shift and must report to work for that shift if the employer requests. Click here for more details.	Feb. 4, 2019
“ME TOO”: SEXUAL HARASSMENT & DISCRIMINATION LAWS		
Sexual Harassment Trainings [SB 1343]	Employers with 5 or more employees must provide at least 2 hours of sexual harassment training to all supervisory employees and at least 1 hour of sexual harassment training to all nonsupervisory employees by January 1, 2020, and once every two years thereafter. Click here for more details.	Jan. 1, 2019
Employers are Protected From Sexual Harassment Defamation Claims <i>[AB 2770 amends Civ. Code § 47]</i>	AB 2770 extends employers’ protection from defamation claims. Employers may now state, without fear of being held liable for defamation, whether their decision to hire an applicant is based upon the applicant’s current or former employer’s determination that the applicant engaged in sexual harassment.	Jan. 1, 2019
Settlement Agreements & Disclosure of Information Related to Claims of Sexual Assault <i>[SB 820 adds to Civ. Proc. Code § 1001]</i>	Settlement agreements of state court or administrative claims may not prohibit parties from disclosing factual information related to claims of sexual assault, sexual harassment, or harassment or discrimination based on sex. Any settlement agreement that prevents the disclosure of this factual information is void and unenforceable. Click here for more details.	Jan. 1, 2019

Topic	Summary	Effective Date
<p>Contracts & Settlement Agreements</p> <p>[AB 3109 adds to Civ. Code § 1670.11]</p>	<p>Contracts or settlement agreements may not require a party to waive their rights to testify about criminal or sexual harassment committed by the other party.</p> <p>Any contracts or settlements with a term that waives the party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment is void and unenforceable.</p> <p>Click here for more details.</p>	Jan. 1, 2019
<p>Employee Agreements & Unlawful Acts in the Workplace</p> <p>[SB 1300 adds to Cal. Gov. Code § 12964.5]</p>	<p>It is now unlawful for employers to require employees to release FEHA claims or to remain confidential about "unlawful acts in the workplace." Information regarding "unlawful acts in the workplace" includes but is not limited to information pertaining to sexual harassment or any other unlawful or potentially unlawful conduct.</p> <p>This law does not apply to any agreements that are a negotiated resolution of a lawsuit, an agency complaint, or an internal complaint brought by an employee, in which case the employer can still get a release and require confidentiality concerning allegedly unlawful acts [to the extent that the confidentiality provisions does not apply to sexual harassment or discrimination claims as set forth in SB 820 or SB AB 3109].</p>	Jan. 1, 2019
<p>Fair Employment and Housing Act [FEHA] Expansion [SB 1300]</p>	<p>FEHA lowers the bar for employees to bring harassment claims against their employers. FEHA expands employer liability to acts by non-employees to cover any act of harassment (rather than only acts of sexual harassment) that the employer is made aware of and fails to address with the appropriate corrective action.</p> <p>Click here for more details.</p>	Jan. 1, 2019
HOTEL LAWS		
<p>Housekeeping Training Regulations</p>	<p>Hotel employers must train on and maintain an effective, written musculoskeletal injury prevention program [MIPP] that addresses hazards specific to housekeeping.</p> <p>Click here for more details.</p>	Jul. 1, 2018
<p>Prop. 65 Warning Signs</p>	<p>California hotels must display additional signs warning guests of chemicals that can cause cancer, birth defects, or other reproductive harm.</p> <p>Click here for more details.</p>	Aug. 30, 2018
<p>Human Trafficking Training</p>	<p>All covered employees hired after January 1, 2019, must be given training on human trafficking within six [6] months of their employment. All covered employees, regardless of hire date, must receive this training by January 1, 2020. Additional trainings will also be required once every two [2] years subsequent to January 1, 2020.</p> <p>Click here for more details, and here for sample slides to use in workplace trainings.</p>	Jan. 1, 2019

Topic	Summary	Effective Date
Oakland "Measure Z" (Minimum Wage Charter Amendment)	Hotels with 50 or more guest rooms in the City of Oakland must pay an increased minimum wage for covered hotel employees, provide panic buttons, and limit mandatory overtime, among other items. The wage increase is effective on July 1, 2019, with potential regulations and enforcement mechanisms likely by 2020.	Jul. 1, 2019
HIRING-RELATED LAWS		
San Francisco 'Ban-The-Box' Ordinance	San Francisco implements critical amendments to its "Fair Chance Ordinance" (FCO). FCO now applies to San Francisco employers with 5 or more employees located anywhere. Employers cannot ask about a conviction for a crime that has been decriminalized or ask about an applicant's criminal history until making a conditional job offer of employment. Click here for more details.	Oct. 1, 2018
Salary Ban Amendment [AB 2282]	California's statewide salary history ban is amended to add guidance about the questions an employer may ask during an interview and when employers must disclose pay scales for positions.	Jan. 1, 2019
ADDITIONAL PROTECTIONS FOR MILITARY SERVICE MEMEBERS		
Discrimination Against Service Members [SB 1500]	Employers may not discharge or halt benefits of an employee for being a member of the military reserve or because of ordered military duty or training.	Jan. 1, 2019
Paid Family Military Leave [SB 1123]	Paid family leave benefits are expanded to employees who take time off to participate in a "qualifying exigency" related to covered military active duty.	Jan. 1, 2021

GEORGIA

Topic	Summary	Effective Date
Medical Marijuana Protection [Georgia Code § 16-12-191]	Georgia law recently allowed the use of medical marijuana for employees who suffer from certain illnesses in 2017. The use of medical marijuana was extended to individuals suffering from PTSD and intractable pain in 2018.	May 7, 2018

HAWAII

Topic	Summary	Effective Date
Salary History Restrictions and Wage Transparency [SB 2351]	Employers may not ask about an applicant's salary history or rely on that information when determining what compensation to offer an applicant.	Jan. 1, 2019

ILLINOIS

<i>Topic</i>	<i>Summary</i>	<i>Effective Date</i>
WORKPLACE LAWS		
Expense Reimbursement [820 ILCS 115/9.5(a)]	Employers must reimburse employees for all necessary expenditures or losses directly related to services performed by the employer.	Jan. 1, 2019
Service Member Employee Reemployment Rights Act [330 ILCS 61]	Employers may not impose conditions for military leave. Service members must provide notice of pending service to employers to take military leave.	Jun. 1, 2019
Equal Pay Act [820 ILCS 112]	Employers may not pay unequal wages to male and female employees for doing “the same or substantially similar work.” The Equal Pay Act is also amended to prohibit employers from paying African-American employees less than others.	Jan. 1, 2019
Biometric Privacy Act [740 ILCS 14]	Employers may be sued for violating Illinois’ Biometric Information Privacy Act (“BIPA”) even if an employee has not actually been harmed. Employees need not prove actual harm, but can now simply sue if an employer fails to (1) obtain written consent from all employees who will use the biometric system, or (2) destroy all biometric data within 3 years after an employee separates from the hotel.	Jan. 25, 2019

MASSACHUSETTS

<i>Topic</i>	<i>Summary</i>	<i>Effective Date</i>
WORKPLACE LAWS		
Pregnant Workers Fairness Act	Employers are required to provide employees with reasonable accommodations for their pregnancies and may not discriminate on the basis of pregnancy or a condition related to pregnancy, including lactation.	Apr. 1, 2018
Paid Family Leave	New mothers and fathers are provided up to 12 weeks of paid family leave to bond with a new child. Family leave is also provided for other life events, including up to 12 weeks for caring for a loved one (up to 26 weeks if the health condition results from active duty) and up to 20 weeks for caring for a person individually. Individual care can include medical complications from pregnancy, birth, or postpartum recovery. The total amount of annual leave is capped at 26 weeks.	Jun. 28, 2018
Ban The Box Amendments	Massachusetts’ existing Ban-the-Box law is amended to prohibit questions to job applicants about expunged or sealed criminal records and to prohibit employers from asking about convictions more than 3 years old.	Oct. 13, 2018

NEW YORK

<i>Topic</i>	<i>Summary</i>	<i>Effective Date</i>
“ME TOO”: SEXUAL HARASSMENT & DISCRIMINATION LAWS		
New York City Sexual Harassment Laws	<p>NYC employers must provide new employees with information about sexual harassment protections in the workplace [this fact sheet in English and Spanish, or a handbook policy that contains the same information]. Employers must also post a sexual harassment rights and responsibilities poster in English, Spanish, and other languages spoken by employees.</p> <p>Click here for more information.</p>	Sept. 6, 2018
New York State Harassment Laws	<p>New York employers must (1) provide all employees with written policies describing employee protections against sexual harassment and (2) conduct annual sexual harassment prevention trainings with all employees by January 1, 2019.</p> <p>Click here for more information.</p>	Oct. 9, 2018
Transgender Rights	<p>New York adds gender identification or expression as a protected class in its human rights and hate crimes laws – employers may not discriminate based on gender identity or gender expression.</p>	Jan. 25, 2019
New York City to Ban Discrimination Based on Hair	<p>NYC Commission on Human Rights’ guidelines prohibit the targeting of people based on their hair or hairstyle, at work, school or in public spaces. The guidelines give legal recourse to individuals who have been harassed, threatened, punished, demoted or fired because of the texture or style of their hair.</p>	Feb. 2019

OREGON

<i>Topic</i>	<i>Summary</i>	<i>Effective Date</i>
Predictive Scheduling	<p>Oregon’s “Fair Work Week Act” requires covered employers to provide employees with advanced notice of their work schedules. This Act applies to large retail, food service, and hospitality industries employers with more than 500 employees worldwide and at least one or more hourly employees working in the State of Oregon.</p> <p>Click here for more information.</p>	Sept. 6, 2018

TEXAS

Topic	Summary	Effective Date
WORKPLACE LAWS		
Paid Sick Leave (San Antonio, TX)	Employers must provide 1 hour of earned sick time for every 30 hours worked within the City of San Antonio.	Jan. 1, 2019
Paid Sick Leave (Austin, TX)	Employers will not need to provide paid sick leave in Austin. Despite Austin's recent passing of a paid sick leave ordinance, the Austin courts ruled that the paid sick leave legislation was unconstitutional.	N/A

WASHINGTON

Topic	Summary	Effective Date
WORKPLACE LAWS		
Paid Sick Leave [Chapter 49.46 RCW]	Employers in Washington must provide nearly all of their employees with paid sick leave (1 hour for every 40 hours worked). Employees may start to use paid sick leave on or after their 90th day of employment.	Jan. 1, 2018
Paid Sick and Safe Time [Chapter 49.46 RCW]	Eligible employees are now entitled to use paid sick time for "safe" time to deal with situations such as domestic abuse or sexual assault, or closure of work or school for any health-related reason. Click here for more information.	Jan. 1, 2019
Paid Family Leave	Employers must provide 12 weeks of paid time off for the birth/adoption of a child, or for the serious medical condition of the employee or the employee's family members.	Dec. 31, 2019
Commuter Benefits Ordinance (Seattle) [Seattle Municipal Code Ch. 14.30]	Businesses with 20 or more employees must offer employees the opportunity to make a monthly pre-tax payroll deduction for transit or vanpool expenses.	Jan. 1, 2020