New Year, New Laws, New Headaches…

By Karen L. Gabler, Esq.

The first half of the 2017 - 2018 legislative session was a busy one. By the October 15, 2017, deadline, Governor Brown, consistent with years past, rubber-stamped approximately 86% of the bills that crossed his desk. Although not all of those bills were employment law related, a good number were. Below are five critical examples:

Criminal History: Ban-the-Box:

Effective January 1, 2018, AB 1008 makes it unlawful for employers with five or more employees to include inquiries about criminal histories in their employment applications or initial screening processes. Only after a conditional offer of employment has been made are these types of inquiries allowed. Even after a conditional offer of employment, however, if a criminal history will adversely impact a hiring decision, the employer must provide the affected applicant with notice and engage in an individualized assessment process to determine whether or not the criminal history directly impacts the specific job duties the applicant would perform. This can be a multi-step process, so proceed with care!

Salary History Inquiry Ban:

Effective January 1, 2018, AB 168 prohibits employers from "orally or in writing, personally or through an agent, [from seeking] salary history information, including compensation and benefits, about an applicant for employment." This broadly-worded prohibition extends to all forms of seeking or relying on salary history information (including benefits data); it should not be used in determining whether to offer employment or determining what salary to offer. Employers should review their job application forms and other initial screening materials to ensure there are no questions regarding criminal or salary histories. Train hiring managers not to request such information from the employee or from any other source (including former employers) before a contingent offer of employment is given.

Paid Family Leave: Baby Bonding Expanded

Effective January 1, 2018, SB 63 will amend the California Family Rights Act (CFRA) to require that private, state, and municipal employers that have 20 or more employees within 75 miles to provide their employees with up to 12 weeks of job-protected, but unpaid, parental leave. Employers also must maintain and continue to pay for the employees' continued coverage under a group health plan at the same level and under the same conditions that coverage would have been provided had the employee continued to work. Employers that have between 20 and 49 employees (or if you will hit those magic numbers) between now and January 1, 2018, should update their leave of absence policies to include this new parental leave law.

Immigration: Do You Have a Warrant for That?

Effective January 1, 2018, AB 450 will prohibit employers (or their agents) "[e]xcept as otherwise required by federal law…from providing voluntary consent to an immigration enforcement agent [ICE] to enter nonpublic areas of a place of labor unless the agent provides a judicial warrant." The bill also prevents employers from giving "voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or court order." As if that was not enough, AB 450 also requires employers to provide notice to their current employees on impending immigration enforcement inspections.

Cleaning Products:

SB 258 covers several issues (including creating the "Cleaning Product Right to Know Act of 2017"), but for employers, it really just creates one more administrative to-do for your office manager. Now that person must conduct an inventory and create safety data sheets about the obscure "chemically formulated consumer products" (i.e., your cleaning supplies) that have been sitting for years in the cupboard under the common-room kitchen sink. The safety data sheets must then be made accessible to your employees in the same manner in which you provide other safety-related materials.

Mileage Reimbursement Rates:

Remember that employers must reimburse employees for work-related mileage, other than the usual commute to and from work. This includes travel between job sites or clients throughout the date, as well as travel outside the normal work day or the normal job site. Employers may choose to pay rates lower than the IRS standard if the chosen rates fully compensate the employee for travel-related costs (including fuel, insurance, repairs and depreciation). However, payment of the IRS standard rates will be deemed reasonable and sufficient reimbursement as a general rule. Watch for the 2018 rates to be published by the IRS in December of 2017. The current rates can be found at https://www.irs.gov/pub/irs-drop/n-16-79.pdf.

These are merely a few of the legal changes facing employers in the coming year. For further information and to participate in a review of more than 100 new laws for 2018 and cases decided in 2017, attend an "Employment Law Update" seminar in your area. LightGabler employment attorneys will be speaking at multiple sessions in numerous locations between October 2017 and January 2018. For more information on upcoming programs, see kgabler@lightgablerlaw.com.

Karen L. Gabler is an employment attorney with LightGabler in Camarillo. For over 25 years, she has counseled employers and managers on a wide variety of employment law issues, providing proactive strategies her clients can use to ensure workplace productivity and avoid employee claims. For more information, contact Karen at kgabler@lightgablerlaw.com, or call 805-248-7207. See www.LightGablerLaw.com.