Engage PEO Client Alert:

California Updates

The following is a review of various employment law updates for California employers:

- **Sexual Harassment & Abusive Conduct Prevention Training**
- **General Acute Care Hospitals Required to Reimburse Certain Training Expenses**
- **Expanded California Family Rights Act Takes Effect; New Parent Leave Act Sunsets**
- **Paid Family Leave Expanded to Qualified Military Exigencies**
- **Kin-Care Employee Rights Revised**
- **Expanded Time Off for Crime victims**
- **New Child Abuse & Neglect Training & Reporting Requirements**
- **Amendment to Prohibition on No-Rehire Provisions in Settlement Agreements**
- **Employers Permitted to Require Certain Security Guards to Remain on Premises and On Call During Rest Breaks**
- **Expansion of California Consumer Financial Protection Law**
- **California's New Employee Pay Data Reporting Requirement**

Sexual Harassment & Abusive Conduct Prevention Training – January 1, 2021 Deadline

Reminder to California employers with 5 or more employees anywhere that **January 1, 2021** is the deadline to complete the initial round of training for your supervisors and non-supervisory employees. Please review Engage's May 21, 2020 Client Alert (linked here), July 29, 2020 Client Alert (linked here), and October 20, 2020 Client Alert (linked here) for more details. The best practice is to train all California employees before December 30, 2020.

General Acute Care Hospitals Required to Reimburse Certain Training Expenses for Applicants & Employees

Effective January 1, 2021, and pursuant to Assembly Bill 2588 (link here), general acute care hospitals will be required to reimburse applicants and employees for "any expense or cost of any ***employer-provided or employer-required educational program or training*** for an employee providing direct patient care or an applicant for direct patient care employment[, which shall include [t]hose expenses or costs shall constitute a necessary expenditure or loss incurred by the employee in direct consequence of the discharge of the employee's duties, as that phrase is used in [California Labor Code] Section 2802." Notably, ***employer-provided or employer-required educational program or training*** will exclude the following:

- "Requirements for a license, registration, or certification necessary to legally practice in a specific employee classification to provide direct patient care" and
- "Education or training that is voluntarily undertaken by the employee or applicant solely at their discretion."

Expanded California Family Rights Act Takes Effect & New Parent Leave Act Sunsets

On **January 1, 2021**, the expanded California Family Rights Act (CFRA) takes effect and will apply to employers with 5 or more employees, and it will replace the New Parent Leave Act. **Click here to review Engage's September 28, 2020 Client Alert that addresses the expansive changes to CFRA**.

Paid Family Leave Expanded to Qualified Military Exigencies

Effective January 1, 2021, and per Assembly Bill 2399, eligible employees can use California Paid Family Leave (PFL) benefits to take time off from work for a ***qualifying military exigency*** related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the U.S.

- **A template, combined California Family Rights Act & Paid Family Leave Policy and Acknowledgement Form is linked here.**

Kin-Care Employee Rights Revised

Per California's current kin-care law, employees with sick leave can "use [available sick leave] in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement" for the following reasons: "Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member" or if the employee "is an employee who is a victim of domestic violence, sexual assault, or stalking[.]" Effective **January 1, 2021**, and pursuant to Assembly Bill 2017 (linked here), employees have the right to designate sick leave taken as kin care leave at the sole discretion of the employee.

Expansion of Protected Time off for Crime Victims

Pursuant to Assembly Bill 2992 (linked here), beginning January 1, 2021, employees not only can take leave if they are victims of domestic violence, sexual assault or stalking, but they also may take leave when the employee is a victim of a crime that caused "physical injury or that caused mental injury and a threat of physical injury" or when an employee's "immediate family member is deceased as a result of a crime."

New Child Abuse & Neglect Training & Reporting Requirements for Human Resources & Other Persons

Effective **January 1, 2021**, California Penal Code section 11165.7 will expand to require training and reporting requirements for Human Resources and other designated persons. Please click link here to review Engage's October 20, 2020 Client Alert regarding the new requirements.

Amendment to Prohibition on No-Rehire Provisions in Settlement Agreements

In 2019, California law was amended to significantly restrict employers' use of no-rehire provisions in employment settlement agreements with employees. Effective **January 1, 2021**, California law

(link here) (1) will require employees to have filed claims in ***good faith*** in order for the no-rehire prohibition to apply; and (2) will permit no-rehire provisions in settlement agreements if the aggrieved party has engaged in any criminal conduct ***provided that*** the employer ***documented*** a good-faith determination of sexual harassment, sexual assault or criminal activity **BEFORE *the aggrieved party filed the claim*** against the employer.

Employers Permitted to Require Certain Security Guards to Remain on Premises and On Call During Rest Breaks

Commencing **January 1, 2021**, and pursuant to Assembly Bill 1512 (link here) employers may require security guards to remain on their premises for rest breaks if (1) the security guard is subject to a valid collective bargaining agreement (CBA); and (2) the CBA "expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for rest periods for those employees, final and binding arbitration of disputes concerning application of its rest period provisions, premium wage rates for all overtime hours worked, **and a regular hourly rate of pay of not less than one dollar more than the state minimum wage rate**."

Expansion of California Consumer Financial Protection Law

The California Consumer Financial Protection Law applies to a "covered person" which is defined as the following: (1) "[a]ny person that engages in offering or providing a consumer financial product or service to a resident of this state"; (2) "[a]ny affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person"; and (3) "[a]ny service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service." Pursuant to Assembly Bill 1864 (link here), beginning **January 1, 2021**, employers subject to the California Consumer Financial Protection Law are prohibited from discriminating against or terminating (or causing discrimination or termination) "any covered employee, 'any individual performing tasks related to the offering or provision of a consumer financial product or service,' or any authorized representative of covered employees by reason of the fact that the employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee, or any person acting pursuant to a request of the employee, **who has either**: "Filed or instituted, or caused to be filed or instituted, any proceeding under any consumer financial law" or "Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee or other such person reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the department."

California's New Employee Pay Data Reporting Requirement

On September 30, 2020, the California Governor signed into law Senate Bill 937 (link here), imposing a new employee pay data reporting requirement on certain California employers. The new law takes effect on January 1, 2021, with annual reporting requirements commencing **March 31, 2021 for 2020**.

The new law applies to California private employers with 100 or more employees and who are required to file annual EEO-1 reports pursuant to federal law. Covered employers must report to the California Department of Employment and Housing (DFEH) on an annual basis the following employee pay data:

1. The number of employees by ***sex, race*** and ***ethnicity*** for each of the following job categories:
    a. Executive or senior level officials and managers
    b. First or mid-level officials and managers
    c. Professionals
    d. Technicians
    e. Sales workers
    f. Administrative support workers
    g. Craft workers
    h. Operatives
    i. Laborers and helpers
    j. Service workers
2. The number of employees by ***race, ethnicity,*** and ***sex***, whose annual earnings fall within ***the pay bands*** utilized by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey.

The new law permits employers to prepare a "'snapshot' that counts all of the individuals in each job category by race, ethnicity, and sex, employed during a single pay period of the employer's choice between October 1 and December 31 of the 'Reporting Year,'" which the law defines as the prior calendar year. Covered employers' reports also must include "the total number of hours worked by each employee counted in each pay band during the 'Reporting Year.'"

Covered ***employers with multiple establishments*** must submit "a report for each establishment and a ***consolidated report*** that includes all employees. The report shall include the employer's North American Industry Classification System (NAICS) code."

Again, the initial reporting deadline is **March 31, 2021** and every March 31st thereafter, and the submitted reports must permit the DFEH to search and sort the information. Engage will continue to provide updates to clients regarding this new employee pay data reporting requirement.

Please contact your HR Consultant if you have any questions.