

Today is the final day for the Governor to act upon the 789 bills sent to his desk during the last few days of the legislative session. This week was busy for labor and energy legislation. Below is an update on some of the key labor legislation passed this year.

2016 has been an exceptionally active year for labor and employment issues. Issues taken up by the state Legislature this year run the gamut from new protected leave mandates; overtime for agricultural workers; workers' compensation reform and a new state run retirement savings programs for private sector workers. All of the bills below have been signed or are on Governor Jerry Brown's desk for action. These bills include:

- AB 1050 carried by Assembly Member Evan Low (D-Campbell) was vetoed by the Governor on September 27, 2016. The proposed law adds new notification requirements for California Division of Occupational Safety and Health Administration, (Cal/OSHA) conveyance variance (elevators, lifts, etc.) applicants, creating broad new precedent for who must be notified and who can be party to Cal/OSHA proceedings.
- AB 1066 will phase-out the overtime exemption for agricultural workers. This legislation was one of the most controversial of the session. Originally failing on the Assembly floor, the author Lorena Gonzalez did a procedural action called a "gut and amend" and reinvigorated AB 1066. The bill will require overtime for agricultural field employees after 8 hours in a day and 5 days worked in a week. The requirements will be phased in over 4 years. Late amendments provide employers under 25 employees with an additional 3 years to comply. Signed by the Governor. (*Chapter 313, Statutes of 2016*)
- AB 1676, authored by Assembly Member Nora Campos (D-San Jose), is currently on the Governor's desk. AB 1676 provides that a job applicant's prior salary cannot, by itself, justify any disparity in compensation.
- The Governor has signed into law AB 2337 by Assembly Member Autumn Burke (D-Inglewood) that mandates employers of 25 or more employees must provide written notice to employees of their rights to take protected time off for domestic violence, sexual assault or stalking. This new law requires employers to inform each employee of his or her rights upon hire and at any time thereafter upon request by the employee. The Labor Commissioner will develop a form for the notices by July 2017. (*Chapter 355, Statutes of 2016*)
- Governor Brown has signed AB 2535 authored by Mark Ridley-Thomas (D-Los Angeles) that sets in statute an important clarification that an employer must only track hours worked and record those hours on an itemized wage statement for hourly, non-exempt employees. This ensures that employers do not have to track and record salaried exempt employee hours. (*Chapter 77, Statutes of 2016*)
- A new stackable protected leave measure is also on the Governor's desk. SB 654 by Senator Hannah Beth Jackson (D-Santa Barbara), if signed, would affect California employers with 20 or more employees by imposing yet another protected leave mandate. This proposed law would require the affected employer to offer six weeks of protected leave for baby bonding. This proposed mandate can be stacked on top of the

current state requirement that employers with 5 or more employees allow 16 weeks of protected pregnancy-related leave.

- SB 1001 by Senator Holly Mitchell (D-Los Angeles) is also on the Governor's desk. This measure seeks to add new legal liabilities for employers by making it unlawful for an employer, in the course of satisfying specified work authorization requirements of federal law, to request more or different work authorization documents than are required under specified federal law or to refuse to honor documents tendered that reasonably appear to be genuine from a job applicant. Employers would also be prohibited from attempting to reinvestigate or re-verify a current employee's authorization to work. If anyone is found to have done any of the above, they will be subject to up to a \$10,000 penalty imposed by the Labor Commissioner and liability for equitable relief.
- SB 1063 by Senator Isadore Hall (D-Compton) also awaits action by Governor Brown. This bill proposes to amend the Equal Pay Act to prohibit employers from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work.
- Still awaiting action by the Governor is SB 1167 by Senator Tony Mendoza (D-Artesia) that orders the California Division of Occupational Safety and Health Administration, (Cal/OSHA), by January 1, 2019, to propose to the state Occupational Safety and Health Standards Board, a heat illness and injury prevention standard applicable to workers working in indoor places of employment. The bill does not prohibit the division from proposing, or the standards board from adopting, a standard that limits the application of high heat provisions to certain industry sectors.
- One of the most significant pieces of employment related legislation is SB 1234, by Senate President Pro Tem Kevin DeLeon. SB 1234 is still on Governor Brown's desk. This bill establishes the Secure Choice Retirement (SCRSP) program for all covered employees. The provisions of SB 1234 mandate the creation of savings accounts for workers whose employers don't offer a pension, 401(k) or other retirement savings option and would be automatically enrolled. The program will be phased in over a 36 month period and overseen by the new Secure Choice Retirement Savings Investment Board.
  - ✓ Within 12 months of the program opening for enrollment, employers with more than 100 employees and no retirement savings plan must help their employees to automatically enroll their employees that do not opt out of the program.
  - ✓ Employers with 50-99 employees would have 24 months to enroll workers; and
  - ✓ Employers with 5-49 employees would have 36 months.

Other key provisions are:

- Employees have the right to opt out of the program.
- Allows the Board, unless otherwise specified by the employee, to set the initial employee contribution into the SCRSP between 2% and 5% of their gross wages.

- Employers always retain the right to provide their own employer-sponsored retirement plans in lieu of SCRSP.
- The SCRSP Board may implement annual automatic escalation of employee contributions of up to 8%, but cannot rise more than 1% in a year.
- An employee may opt out of automatic escalation and set his or her contribution rate at a level determined by the employee.

In conclusion, employers will need to keep abreast of the Governor's action on the legislation above. Most of the bills become effective January 1, 2016, unless otherwise noted. Also, many of these bills, if signed, will require employers to change their employment handbooks or provide new notices to employees about the changes in law.

More information on the specific language in these bills can be found [here](#).

Employers are also advised to talk to their HR specialists or attorneys in order to ensure their employment policies, procedures, training and notices meet the standards set by the new laws.

### **DPR Announces Pesticide Restrictions Near Schools and Day Care Centers**

DPR is proposing a new regulation that would give further protections to children when agricultural pesticides are applied close to schools and child day-care facilities. The full proposed regulation release September 30 can be found [here](#).

Many K-12 schools and child day-care facilities are located near farming operations and increasingly teachers, parents and the public want to know whether the chemicals being applied could adversely affect them.

While many counties in California currently have varying requirements for notification of certain pesticide applications near schools, the proposed regulation would be the first statewide standard. The regulation would affect about 3,500 schools and child day-care facilities and involve approximately 2,500 growers in California.

The proposal was informed by a series of public workshops held over the last year in five locations around the state to gather input from school administrators, growers and applicators, parents, teachers and the community. DPR is seeking further public comment on the proposed regulation by November 17, 2016, and a final regulation is expected to become effective in September 2017.

The proposed regulation would do the following:

- Prohibit many pesticide applications within a quarter mile of public K-12 schools and child day-care facilities from Monday through Friday between 6am and 6pm. These include all applications by aircraft, sprinklers, air-blast and all fumigant applications. In addition most dust and/or powder pesticide applications such as sulfur would also be prohibited during this time.

- Require California growers and pest control contractors to notify public K-12 schools and child day-care facilities and county agricultural commissioners (CACs) when certain pesticide applications are made within a quarter mile of these schools and facilities.

Under the proposed regulation, California growers would be required to provide two types of notifications to a school or child day-care facility:

(i) An annual notification that lists all the pesticides expected to be used during the upcoming year. This must be provided to the school or child day care facility administrator by April 30 each year. The notice must include among other things:

- The name of pesticide products (and the main active ingredient) to be used
- A map showing the location of the field to be treated
- Contact information for the grower/operator and the County Agricultural Commissioner
- The web address for the National Pesticide Information Center where additional sources of information or facts on pesticides may be obtained.

(ii) An application-specific notification which must be provided to the school or child day-care facility 48 hours before each application is made. This begins Jan 1 2018 and must include among other things:

- Name of pesticide products (and the main active ingredient) to be used;
- Specific location of the application and the number of acres to be treated;
- Earliest date and time of the application.

California has varying microclimates and schools have various extracurricular school activities. Therefore, the regulation will allow the individual school or child day-care facility, the grower and the CAC to develop an alternative written agreement, to which all three parties must consent, that provides equal or more protection than the regulation. This agreement will be enforced by the CAC.

### **State Water Board Releases Draft Flow Objectives for San Joaquin River; Salinity Objectives for the Southern Delta**

The State Water Resources Control Board released a draft proposal to update water quality requirements for salinity in the southern Delta and water flows in major tributaries to the San Joaquin River (the Stanislaus, Tuolumne, and Merced Rivers), which drain into the southern Delta.

The refined salinity requirements reflect updated scientific information about salt levels. The new flow requirements for the San Joaquin River's major tributaries recognize the role upstream water flows provide for habitat and migratory signals for native fish species. In summary, the draft proposes increasing flows for fish and wildlife and adjusts the salinity requirements to a slightly higher level to reflect updated scientific knowledge.

The San Joaquin River is a key part of the Bay-Delta system. Flow objectives on the San Joaquin River have not been updated since 1995. Since that time salmon and steelhead, including those that spawn and rear in the San Joaquin's tributaries and migrate through the Delta to the Pacific Ocean, have steeply declined. The proposed flow objective for the Lower San Joaquin River and its tributaries is designed to protect at-risk native fish species by leaving more water in the rivers during the critical February through June time period.

Unimpaired flow is a measure of the total amount of water that would flow down a river if it was not diverted or stored in a reservoir. The staff proposal recommends a range of between 30 and 50 percent of unimpaired flow, with a starting point of 40 percent.

Stakeholders are encouraged to work together to present the State Water Board with voluntary agreements that would implement Bay-Delta Plan objectives for fish and wildlife beneficial uses. Voluntary agreements to implement non-flow actions that improve conditions for fish and wildlife may reduce flows needed within the 30 to 50 percent range.

The staff proposal also includes a recommendation to revise salinity objectives in the southern Delta. High concentrations of salt in irrigation water can reduce crop yields. However, studies of the most salt-sensitive crops grown in the southern Delta show that the existing April through August salinity objective is lower than what is needed to reasonably protect agriculture. The new objective, coupled with the continuation or improvement of management actions to respond to salinity, such as the maintenance of adequate water levels and requirements on federal and state water project operations, in conjunction with increased San Joaquin River flows, would provide the same or better conditions for agricultural uses in the southern Delta as currently exist.

Comments on the draft SED are due on Nov. 15 of this year. A public hearing will be held over three days beginning on Nov. 2 in Sacramento, continuing Nov. 4 in the Modesto area, and concluding Nov. 10 in Sacramento.