Leaderschoice
INSURANCE SERVICES

January 2018 | Volume 8 | Issue 1

NEWSALERT

Human Resources

Top 10 Laws, Regulations and Trends for 2018

IN THIS article, we focus on the top 10 laws, regulations and developments going into 2018 that employers need to be aware of.

1. New Parent Leave Act

Effective Jan. 1, employers in California with 20 or more workers are required to provide eligible employees with 12 weeks of unpaid, job-protected leave to bond with a new child.

This builds on a 20-year-old law that required employers with 50 or more staff to provide employees with time off for child bonding. Like the current law, the New Parent Leave Act applies to newborns or a child placed with the employee for adoption for foster care.

To be eligible, an employee must:

- Have worked for the employer for at least 12 months;
- Have worked at least 1,250 hours in the 12 months before taking leave; and
- Work at a worksite that has at least 20 employees within a 75-mile radius.

While the leave is unpaid, employees are allowed to use accrued vacation pay, paid sick time off or other accrued paid time off.

2. Wage increases

With the economy humming along at a decent pace of growth and unemployment at record lows, employers should expect competition for talent to increase.

Quality personnel is scarce, and economists predict that will lead to wage inflation.

The Society for Human Resources Management predicts that companies should expect to pay about 3% more in wages across all sectors. In high-demand fields like health care, elderly care, engineering, hi-tech and construction, they may pay more than that to retain and attract talent.

3. Anti-harassment training

Current law requires firms with 50 or more staff to hold two hours of anti-sexual harassment training for supervisors every two years.

A new law, SB 396, expands the subjects of that training to also include harassment based on gender identity, gender expression and sexual orientation.

The training must include specific examples of such harassment. This portion of the training must be presented by trainers with knowledge and expertise in these areas.

4. ACA compliance

The IRS has stepped up enforcement of Affordable Care Act form-filing compliance.

Besides being able to fine your organization for not complying with the law, it will also be fining employers that fail to file the forms or make mistakes in filing them.

Under the ACA, an employer can be fined $250 for each form that it fails to file or files late, as well as for forms with missing or incorrect information like names, birthdates or Social Security numbers. The maximum fine for these filing errors is $3 million per organization.

5. Salary history off limits

Starting in 2018, AB 168 restricts the types of salary questions that employers in California can ask job applicants.

In particular, employers may not ask prospective employees about their prior salaries at other employers.

The new law also bars employers from relying on prior salary history when deciding whether to hire someone and how much to pay them.

See 'Liability' on page 2

Leaders Choice Insurance
Wishes You a Happy New Year
2018

Leaderschoice
INSURANCE SERVICES

CONTACT US

2520 Venture Oaks Way, Suite 310
Sacramento, CA 95833

Phone: 866.211.2123
Fax: 866.913.7036
www.leaderschoiceins.com

License No. 0G80276

If you would like to receive this newsletter electronically, e-mail us at: info@leaderschoiceins.com

Continued from page 1

Sexual Harassment at the Forefront of Liability Issues

6. Silica rules

Cal/OSHA began enforcing its new silica rules on Sept. 23, 2017 for the construction industry, and now the rules are in full effect.

Under the new silica standard, the permissible exposure limit is 50 micrograms per cubic meter of air, compared to the old standard of 100.

All construction employers covered by the standard are required to:

- Establish a written exposure control plan that identifies tasks that involve exposure and methods used to protect workers.
- Designate a competent person to implement the written exposure control plan.
- Restrict housekeeping practices that expose workers to silica where feasible alternatives are available.

7. Sexual harassment trends and EPLI

With the wave of sexual harassment allegations sweeping the country – taking down public figures in politics, entertainment, business and the media – you can expect the trend to filter down from the spotlight to employers in all industries.

Employers have been in the cross hairs for sexual harassment and discrimination for years, but with more stories and the #metoo movement, there is likely to be an uptick in allegations against supervisors, managers and owners in businesses.

Now is the time to double down on anti-sexual harassment training, putting in place a robust reporting mechanism that shields the accused. If you don't already have it, now is also the time to seriously consider an employment practices liability insurance (EPLI) policy.

8. Worksite immigration enforcement

The Immigrant Worker Protection Act (AB 450) provides workers with protection from immigration enforcement while on the job and imposes fines varying from $2,000 to $10,000 on employers that violate the law's provisions.

This bill also makes it unlawful for employers to re-verify the employment eligibility of current employees in a time or manner not allowed by federal employment eligibility verification laws.

9. Heat safety for indoor workers

Start preparing in 2018 for indoor heat illness regulations that are slated to come on Cal/OSHA's books starting Jan. 1, 2019. A bill passed in 2016 requires that, by that date, the Division propose to the Occupational Safety and Health Standards Board for review and adoption, a heat illness and injury prevention standard applicable to people working in indoor places of employment.

California has had an active outdoor workplace heat illness standard since 2006. Moreover, in the past several years Cal/OSHA and other agencies have initiated either training or enforcement to protect workers against indoor heat illness.

If you have vulnerable workers, you can use 2018 as the year to put safeguards in place for employees that work in high-heat indoor conditions.

The regulations will apply to:

- Indoor workplaces where the dry bulb temperature exceeds 90 degrees, or
- Where employees perform moderate, heavy or very heavy work and the dry bulb temperature exceeds 80 degrees.

10. Criminal background checks

Starting in 2018, employers with five or more workers may not conduct a criminal background check prior to the offer of employment to an applicant.

If an employer does conduct a criminal check after an offer, it must make an individualized assessment whether a particular conviction has a direct and adverse relationship to the specific duties of the job that justifies denying the applicant the position.

Also, if an employer decides not to hire someone based on information from a criminal check, it must notify the applicant of the decision in writing, and provide at least five business days to respond. The employer must then consider the applicant's response before making a final decision. ❖

Coverage Changes

Business Interruption Now Part of Cyber Policies

AS THE full threat of hacking and cyber attacks takes hold, cyber insurance policies are evolving so that the primary focus is on business interruption coverage.

When these policies first hit the market, they were mostly focused on covering the costs of notifying individuals whose personal data or credit card information may have been exposed, and of any regulatory penalties and other compliance costs.

But many companies, when hacked, suffer far more damage to their operations, including websites or important systems being rendered unusable.

The larger danger to companies seems to be system failures resulting from a variety of novel attacks, including;

- Denial of service
- Brute force (an attack aimed at obtaining passwords)
- Malware or malicious code
- Ransomware
- Backdoor attacks
- Social engineering.

Business interruption policies have been around for a while, but they have typically focused on disruptions caused by supply chain issues and natural catastrophes that render businesses unable to operate. Often these interruptions can last for weeks or even months.

The downtime for a business that's been hit by a cyber attack is usually much shorter – a few days to a few weeks at the most.

Also, property policies or traditional business interruption policies have not extended property loss or damage to electronic data, as data is not considered a physical or tangible object subject to loss or damage. Damage is triggered by a direct physical loss or damage.

Meanwhile, business interruption in a cyber policy is triggered by an electronic event such as a cyber attack, or hacking.

For cyber business interruption coverage to be triggered, there must usually be a direct link between a cyber attack and the interruption of business or a loss of sales. For example:

- Criminals destroy data or alter a website's or database's code in order to freeze or render the computer system or website unusable.
- A denial-of-service attack renders a website inaccessible to customers and users.

A business interruption claim would not be triggered, however, if a hacker gained access to your database and rooted around for important company information and operations were not hampered and there was no loss of revenue. ❖

Typical cyber business interruption provisions

- The policy will include a maximum payout for business interruption claims. This caps the payout under the policy. The cap may apply to each individual event or it may be an annual limit.
- Policies may include a separate deductible for business interruption claims.
- Policies may include a specific waiting period of hours or days before kicking in to pay a claim. If the event causes losses or a disruption that lasts less than the waiting period, the claim would likely not be paid.
- Policies usually will only pay for business interruption during the period that the company restores its systems.
- Coverage usually includes a number of exceptions, like not covering third party liability, fines and penalties and the costs of restoring a network.
- Most policies include exclusions as well, like loss of market or damage to computer systems caused by fire or other physical events that were not related to a cyber attack.

FOR MORE INFORMATION, PLEASE CALL US. 866.211.2123

New Law

Lead Contractors Liable for Subs' Wage Payments

CALIFORNIA CONTRACTORS have an added layer of liability starting Jan. 1, thanks to a new law that requires a general contractor on a construction project to pay all unpaid wages and fringe benefits to employees of subcontractors that fail to pay their workers on the project.

The general contractor would even be on the hook if it had paid the subcontractor, but the sub had failed to pay its workers.

This law is a significant development for the construction industry that opens general contractors up to liabilities that they will have to account for.

The law, ushered in by AB 1701:

- Applies only to private construction contracts that were entered into on or after Jan. 1, 2018.
- Allows employees of subcontractors to sue the general contractor for unpaid wages and fringe benefits.
- Gives third parties like unions a right of action to collect unpaid wages and fringe benefits.
- Employees or third parties have one year from the earliest recorded notice of project completion or completion of work.
- Gives the contractor the right to seek reimbursement from the subcontractor and the right to ask for and receive payroll records.
- Allows the state labor commissioner and joint labor-management cooperation committees to bring actions to collect unpaid wages on behalf of subcontractor employees.
- The general contractor's property may be confiscated to pay for unpaid wages.
- Gives labor-management panels and labor unions the right to claim from the general contractor attorneys' fees and legal costs associated with taking action to collect unpaid wages.
- Gives general contractors the right to withhold all payments owed for a subcontractor's failure to comply. ❖

TIPS FOR GENERAL CONTRACTORS

Be aware that you will have to be vigilant about any claims that may arise for up to a year after a project is completed.

The law firm of Newmeyer & Dillion LLP recommends the following in a blog on AB 1701:

- Talk to your lawyers about reviewing and revising existing contracts and to develop a system for tracking payroll activities and confirming evidence of payments of all subcontractors.
- New contracts should include an audit provision requiring subcontractors to provide payroll records upon request.
- New contracts should require subcontractors to defend and indemnify the general contractor for any claims that are brought for unpaid wages and fringe benefits by their employees.
- New contracts should require subcontractors to provide a payment bond to cover any claims for unpaid wages and fringe benefits.
- New contracts should include withholding or back-change provisions so that a general contractor can withhold payments to satisfy wage claims.