WOHLNER KAPLON CUTLER HALFORD & ROSENFELD
ATTORNEYS AT LAW
16501 Ventura Boulevard • Suite 304 • Encino, CA • 91436
Phone: 818.501.8030 • Fax: 818.501.5306 • www.wkclegal.com

Jeffrey L. Cutler
Kathryn J. Halford
Joseph J. Kaplon
Amanda Lively
Michael R. Odoca
Elizabeth Rosenfeld
Renée Q. Sánchez
Nicholas I. Starkman
Jeffrey S. Wohlner

Kenneth P. Young
1950-2003

Looking Ahead: Significant Worker Protection Laws Enacted for 2016-2017 by the California Legislature and the Federal Government

STATE LAWS

$15 Minimum Wage (SB 3).
Signed into law by Governor Jerry Brown on April 4, 2016, this measure will increase the statewide minimum wage from $10.00 to $10.50 on January 1, 2017 for businesses with 26 or more workers. This is the first increase amongst several slated to bring the minimum wage up to $15.00 per hour by 2022, with future increases tied to inflation. Businesses employing 25 or fewer employees will have an extra year to implement each increase. At the bill signing, Brown said "Morally and socially, [minimum wages] make sense because it binds the community and makes sure that parents can take care of their kids in a much more satisfactory way." This victory can be credited in no small part to the "Fight for 15" campaign and union members making their voices heard. SB 3 also expands the Healthy Workplaces, Healthy Families Act of 2014 to cover providers of in-home supportive services.

Farmworker Overtime Bill (AB 1066).
After a rocky path to the Governor's desk, AB 1066 changes overtime rules as applied to farm workers and slowly raises their overtime wages. Existing law exempts farm workers from wage, hour, meal break requirements, and other working conditions that apply to employees in general. AB 1066 removes this exemption and from 2019 – 2022 phases in an overtime provision that requires agricultural work in excess of 12 hours a day to be compensated at twice the farm worker's regular rate. According to the United Farm Workers (UFW), it was a discriminatory, Jim-Crow era law that excluded farm workers from the same rights of other employees, including overtime.

Preserving Overtime for Domestic Workers (SB 1015).
Domestic workers who are personal attendants enjoy hard-won protections from the Domestic Worker Bill of Rights, which, among other things, requires overtime pay for workers who meet certain hourly thresholds. The Domestic Worker Bill of Rights was slated to expire on January 1, 2017 but will now remain the law in California.

Property Services Worker Protection Act (AB 1978).
This law is in part inspired by a 2015 Frontline investigation into widespread sexual assault on janitors working late and overnight shifts. The Property Service Workers Protection Act attempts to address this reality by requiring biennial in-person sexual violence and harassment prevention training by January 1, 2019. Among other provisions, this law also requires a public

database of registered property service employers maintained on the Department of Industrial Relations website.

Wage Equality Act of 2016 (SB 1063).
For decades, California's Equal Pay Act (Labor Code § 1197.5) has prohibited an employer from paying its employees less than employees of the opposite sex for equal work. In 2015, Governor Brown signed the California Fair Pay Act (SB 365), which strengthened the Equal Pay Act by, among other things: 1) eliminating a requirement in the Equal Pay Act that jobs that are compared must be located at the "same establishment"; 2) replaces the comparison of "equal" work with a comparison of "substantially similar work"; 3) makes it more difficult for employers to justify unequal pay between men and women. The Fair Pay Act took effect on January 1, 2016. On January 1, 2017, the Wage Equality Act of 2016, which enacts similar provisions aimed to combat wage differentials based on race or ethnicity, will take effect.

Wage Parity Law (AB 1676).
Effective January 1, 2017, the Legislature further amended the Equal Pay Act to specify that an employee's prior salary cannot, by itself, justify any disparity in compensation among employees of the opposite sex.

Expanding Immigrant Employee Protections (SB 1001).
SB 1001 is designed to address "document abuse." The California Immigrant Policy Center describes document abuse as the process by which an "employer does not permit a worker to use documents that are legally acceptable under the [Federal] I-9 form but, instead, specifies which documents he or she must use, or requests more documents than are required by the I-9 form." SB 1001 combats document abuse by making it unlawful for an employer to, among other things:1) request more or different documents than are required under federal immigration law; 2) refuse to honor documents tendered that on their face reasonably appear to be genuine; 3) reinvestigate or reverify an incumbent employee's authorization to work.

Elimination of Several Employment Verification Requirements (AB 2532).
AB 2532 repeals several important employment verification requirements. The law repeals existing laws which require each state or local government agency or community agency that provides specified employment services (or any private organization contracting with a state or local government agency) to (i) post a notice stating that only citizens or those persons legally authorized to work in the United States will be permitted to use the agency's or organization's employment services and (ii) verify an individual's legal status or authorization to work before providing services.

New Workplace Smoking Prohibitions (ABx2 6 and SBx2 6).
Labor Code section 6404.5 currently prohibits smoking in all enclosed employment spaces in the state. ABx2 6 amends this section to take into account the new definition of smoking in Business and Professions Code section 22950.5, which includes e-cigarettes and vapor. SBx2 6 eliminates most of the specified exemptions that permit smoking in certain work environments, such as hotel lobbies, bars and taverns, banquet rooms, warehouse facilities, and employee break rooms. These laws took effect on June 9, 2016.

Investigating Human Trafficking (AB 1684).
Under AB 1684, the Department of Fair Employment and Housing (the "DFEH") can receive complaints from victims of human trafficking, and the agency is authorized to investigate, prosecute, mediate, conciliate and bring civil actions on behalf of such victims.

Bond Requirement for Employers Contesting Labor Commissioner's Ruling (AB 2899).
An employer seeking a writ of mandate contesting the Labor Commissioner's ruling regarding the failure to pay minimum wage must post a bond with the Labor Commissioner in an amount equal to the unpaid wages assessed under the citation, excluding penalties. The bond must be issued in favor of the unpaid employee, and the proceeds of the bond, sufficient to cover the amount owed, would be forfeited to the employee if the employer fails to pay the amounts owed within 10 days from the conclusion of the proceedings.

Criminal History of Juveniles (AB 1843).
Effective January 1, 2017, this law prohibits an employer from asking about juvenile convictions and prevents employers from utilizing as a factor in determining conditions of employment, information regarding an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. There are certain exceptions for employers at a health facility. The bill was approved by the governor on September 27, 2016.

Revisions to Disability Benefits (AB 908).
This bill was approved by the governor on April 11, 2016. It revises the computation for the benefits available under the family temporary disability insurance program. This program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for specified persons, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. Prior to this law, there was a seven day waiting period. During the waiting period, benefit payments were prohibited. Beginning January 1, 2018, the amount of benefits under the program increases from 55% of earnings to 60 or 70% of earnings, depending on the employee's income (subject to a maximum weekly benefit limit). In addition, the seven day waiting period to receive benefits is eliminated effective January 1, 2018.

Domestic Violence Protection Notification (AB 2337).
This bill was approved by the governor on September 14, 2016. It requires employers who have 25 or more employees to inform employees of their rights to take protected time off because of domestic violence, sexual assault, or stalking. The law requires the labor commissioner to develop a form notice by July 1, 2017. Employers are not required to comply until the labor commissioner posts the form on its website.

Employment Discrimination Protection for Disabled Workers (AB 488).
This bill was approved by the governor on September 27, 2016. Effective January 1, 2017, employees employed under a special license in a nonprofit sheltered workshop, day program, or rehabilitation facility can sue for harassment or discrimination that is prohibited under the California Fair Employment and Housing Act. It was sponsored by Disability Rights California and was authored by Assembly Member Lorena Gonzalez (D-San Diego).

Heat Protection for Indoor Employees (SB 1167).
This bill was approved by the governor on September 29, 2016. Under this law, by January 1, 2019, the Division of Occupational Safety and Health would have to propose to the Occupational Safety and Health Standards Board for review and adoption, a heat illness and injury prevention standard for indoor workers. 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.

State Sponsored Retirement Program (SB 1234).
In what the California State Treasurer touts as "the most ambitious push to expand retirement security since the passage of Social Security in the 1930s," SB 1234 offers a state sponsored retirement program to millions of employees who might not have access to a traditional employer sponsored retirement plan. The bill was approved by the governor on September 29, 2016. The law goes into effect on January 1, 2017 and it authorizes the development and build out of the retirement program. Under the new law, the retirement program will be known as California Secure Choice and will require eligible employers that do not offer retirement plans to have a payroll deposit retirement savings arrangement that would allow employees the ability to participate in California Secure Choice. The rollout of the new program will be based on the number of employees that an employer has. An employee on whose behalf an employer makes contributions to a Taft-Hartley pension trust fund is not an eligible employee.

Local Enforcement to Combat Wage Theft (SB 1342).
This bill was approved by the governor on July 25, 2016. Effective January 1, 2017, the legislative body of a city or county may delegate to a county or city official or department head its authority to issue subpoenas and to report noncompliance to the judge of the superior court of the county, in order to enforce any local law or ordinance, including, but not limited to, local wage laws. The bill which was authored by Senator Tony Mendoza (D- Artesia) encourages cities and counties to develop and enact specific measures to target and remedy wage theft.

Temporary Pay Rules for Security Guards (AB 1311).
This bill was approved by the governor on July 22, 2016 and took effect immediately as an urgency statute. The new law requires temporary security guards employed by a private patrol operator who is a temporary service employer to be paid weekly with certain exceptions. Prior to the enactment, California law already required that an employee of other temporary service employers be paid weekly.

Expedited Release of Funds Held in Escrow Due to Public Works Violations (AB 326).
This law was approved by the governor on September 14, 2016 and goes into effect on January 1, 2017. Under current law, if a contractor or subcontractor violates California public works laws, the Labor Commissioner is authorized to issue a civil wage and penalty assessment against the contractor or subcontractor. In certain instances, the contractor, subcontractor, or surety may deposit the full amount of the assessment or notice, including penalties, with the Department of Industrial Relations in an escrow account. The DIR will then release those funds to the entitled parties at the conclusion of all administrative and judicial review. This new law requires the DIR to release the funds in escrow plus interest earned to the entitled parties within 30 days following

the conclusion of all administrative and judicial review or upon the DIR receiving notice from the Labor Commissioner or from the awarding body of a settlement or other final disposition.

Choice of Law for California Employment Law Contracts (SB 1241).
This bill was approved by the governor on September 25, 2016. Effective January 1, 2017, employers cannot require employees who primarily reside and work in California, as a condition of employment, to agree to a provision that would require the employee to adjudicate a claim arising in California outside of California. Employers also cannot require employees to agree to provisions that deprive the employee of the substantive protection of California law with respect to a controversy arising in California. If any provision of an employment contract violates the new law, it is voidable by the employee and the matter must be adjudicated in California under California law. Adjudication includes litigation and arbitration. However, if an employee is represented by legal counsel, they are exempt from the statute. The new law applies to contracts entered into, modified, or extended on or after January 1, 2017.

Foreign Labor Recruitment Law (SB 477).
SB 477 was signed into law in 2014 but went into effect on July 1, 2016. SB 477 requires foreign labor contractors, on or after July 1, 2015, to be registered with California's Labor Commissioner. The contractors must fully disclose employment terms and conditions in writing, and are prohibited from charging workers recruitment fees. The bill bans intimidation, coercion, termination or discrimination against a foreign worker or a member of the worker's family in retaliation for a foreign worker's exercise of any rights under this measure.

Design Build for Health Care Districts (SB 957).
This bill was approved by the governor on August 26, 2016 and goes into effect on January 1, 2017. This law would authorize health care districts to use the design build process for constructing hospitals or health facility buildings. Generally, under a design build process, a single contract that requires the use of a skilled and trained workforce covers the project's design and construction.

Apprentice Compensation for Pre-Employment Activities (SB 1926).
This bill was approved by the governor on September 28, 2016 and goes into effect on January 1, 2017. Under this new law, when a contractor requests dispatch of an apprentice on a public works project, the prevailing apprentice rate must be paid, including travel time, for any required pre-employment activity except as specified.

Workforce Innovation and Opportunity Act Funding (AB 2288).
This bill was approved by the governor on September 27, 2016 and goes into effect on January 1, 2017. This new law requires the California Workforce Development Board and each local board to ensure that Workforce Innovation and Opportunity Act funds awarded for pre-apprenticeship training in the building and construction trades fund programs and services that follow the Multi-Craft Core Curriculum and that develop a plan that helps increase the representation of women in those trades.

Alternative Procurement Methods for Surface Storage Projects (AB 2551).
This bill was approved by the governor on September 28, 2016 and goes into effect on January 1, 2017. This law would allow local agencies to use alternative procurement methods on certain surface storage projects. Such alternative methods include the construction manager at-risk, design-build, or design-build-operate delivery method. The law outlines the procurement process that must be used by the local agency and requires the use of a skilled and trained workforce.

Streamlining Skilled and Trained Workforce Requirements (SB 693).
Statutes in California outline specific instances where a public entity is required to obtain an enforceable commitment (e.g. a contract) from a bidder or contractor that he or she will use a "skilled and trained workforce." A skilled and trained workforce is one made up of workers who are either registered apprentices from a state-approved program or skilled journeymen and women for all apprenticeable trades. SB 693 makes these requirements uniform for various public agencies and consolidates them in the Public Contract Code. It also clarifies compliance and enforcement provisions. The bill applies to contracts awarded or bid after January 1, 2017.

Water Resources Infrastructure (SB 831).
This bill appropriates $10 million dollars in construction monies to the Monterey County Water Resources Agency to construct a water conveyance tunnel between Lake Nacimiento and Lake San Antonio utilizing the design-build construction method in conjunction with a Project Labor Agreement. The tunnel will be used for the purpose of maximizing water storage, supply, and groundwater recharge. SB 831 was signed by the Governor on September 13, 2016.

Protecting the Right to Organize (SB 954).
This bill, sponsored by the State Building and Construction Trades Council of California, ensures that contractors cannot deduct a portion of the prevailing wage to fund anti-union, anti-worker contractors and organizations. SB 954 also strengthens the landmark reforms of SB 776 from 2013 which stopped many such wage deductions by requiring that they be paid only to specific programs. For example, SB 954 requires that in order for contributions to be applied to industry advancement funds, the employer must be a party to a collective bargaining agreement that provides for the contributions. It was signed by Governor Brown on August 29, 2016.

FEDERAL LAWS

Final Rule Regarding Federal Overtime.
Effective December 1, 2016, the final rule for federal overtime goes into effect. The new overtime rule makes significant changes to what many refer to as the "white collar" overtime exemption. The government estimates that it will provide overtime protection to over 4 million workers during the law's first year of implementation. The new law will affect how executive, administrative, and professional employees are treated for overtime purposes under the Fair Labor Standards Act. To qualify for the "white collar" exemption, employees must be paid a predetermined fixed salary that is not reduced based on work quality or quantity ("salary basis test"), must be paid more than a specified weekly salary level ("salary level test"), and primarily perform executive, administrative, or professional duties that are set forth in DOL regulations

("duties test"). The new federal overtime rule increases the salary level threshold for the exemption, provides automatic increases to update salary and compensation levels every three years, and allows employers to take into consideration nondiscretionary bonuses and incentive payments to satisfy up to 10% of the new standard salary level. The final rule also increases highly compensated employee exemption amounts.

The federal government set the salary threshold based on the standard salary level at the 40th percentile for full-time salaried workers in the lowest wage census region which is currently in the South. The salary threshold is currently set at $913.00 per week; $47,476.00 per year for a full-year worker. Guidance regarding the law states that the salary threshold is meant to provide a "useful and effective" test for the exemption. In order to ensure that continues, the final rule automatically updates the salary threshold every three years for both the executive, administrative, and professional exemption, and the highly compensated employee exemption.

The standard used for the highly compensated employee exemption is the 90th percentile of annual earnings for full-time salaried workers nationally. This amount is currently $134,004.00 annually. To qualify for the highly compensated employee exemption, an employee also needs to receive at least $913.00 per week and pass a minimal duties test. The minimum duties test will be met if the employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

Paid Sick Leave for Federal Contractors.
President Obama signed Executive Order 13706 on September 7, 2015. The Department of Labor issued a final rule on September 30, 2016. The order applies to new contracts and replacements for expiring federal contracts that result from solicitations issued on or after January 1, 2017 or that are awarded outside of the solicitation process on or after January 1, 2017. Contracts covered by the final rule include those under the Davis Bacon Act, the Service Contract Act, concessions contracts, including any concessions contracts excluded by the Service Contract Act under 29 CFR 4.133(b), and contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. The law covers contractors and subcontractors. Covered employees include those individuals performing work on or in connection with a contract covered by the executive order whose wages are governed by the Service Contract Act, Davis Bacon Act, or the Fair Labor Standards Act, including those who qualify for an exemption from FLSA's minimum wage and overtime requirements. Generally, under the executive order, covered employees must be provided with one hour of paid sick leave for every 30 hours worked, up to 56 hours of paid sick leave each year. There is an option to provide employees with at least 56 hours of paid sick leave at the beginning of the accrual year instead of allowing the employee in order to accrue leave based on hours worked. Contractors can limit paid sick leave accrual to 56 hours each year and are required to permit employees to carry over unused paid sick leave from one year to the next. However, the final rule permits the amount of paid sick leave to be limited to 56 hours at any point in time. The final rule provides that if a CBA that provides at least 56 hours or 7 days of paid sick time or paid time off that may be used for reasons related to sickness or health care is ratified prior to September 30, 2016, the rule will not apply to the employee until the date the agreement terminates or January 1, 2020, whichever is first. The final rule also permits contractors to fulfill their obligations jointly with other contractors who make contributions to a

multiemployer plan maintained pursuant to one or more CBAs on behalf of employees who receive access to paid sick leave that complies with the rule.

New OSHA Whistleblower Guidelines.
On September 9, 2016, OSHA announced that they have issued new guidelines with respect to settlement approval in whistleblower cases. OSHA is responsible for reviewing settlement agreements between complainants and their employers. OSHA notes in its guidance that sometimes settlement agreements contain provisions that prohibit, restrict, or discourage a complainant from participating in protected activity related to matters that arose during employment. The guidance indicates that protected activity includes, but is not limited to, filing a complaint with a government agency, participating in an investigation, testifying in proceedings, or otherwise providing information to the government. OSHA cites several examples in its guidance about types of provisions that discourage whistleblowing which are prohibited. Two examples cited in a press release regarding the new guidance include: 1) Provisions that require employees to waive the right to receive a monetary award from a government-administered whistleblower award for providing information to a government agency about violations of the law and 2) Provisions that require the employee to advise the employer before voluntarily communicating with the government or to affirm that the employee is not a whistleblower.

Minimum Wage for Federal Contractors Executive Order 13658.
President Obama signed Executive Order 13658 on February 12, 2014. The executive order established a minimum wage for federal contractors. The Department of Labor published a notice on September 20, 2016 announcing that beginning January 1, 2017, the minimum wage rate is increased to $10.20 per hour. Covered employees who are tipped will have to be paid a minimum cash wage of $6.80 per hour beginning January 1, 2017. Contracts covered by the executive order include those under the Davis Bacon Act, the Service Contract Act, concessions contracts, including any concessions contracts excluded by the Service Contract Act under 29 CFR 4.133(b), and contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. Covered employees include those individuals performing work on or in connection with a contract covered by the executive order whose wages are governed by the Service Contract Act, Davis Bacon Act, or the Fair Labor Standards Act. The executive order applies to new contracts and replacements for expiring contracts with the federal government that result from solicitations issued on or after January 1, 2015 or to contracts that are awarded outside the solicitation process on or after January 1, 2015. There is an exception for workers who spend less than 20% of their work hours in a particular workweek performing in connection with covered contracts.