

NEW LAWS AFFECTING PUBLIC ENTITIES IN 2016

EMPLOYMENT

AB 272: “Reserve” Officers. Persons deputized by the proper authority as reserve peace officers are now “employees” for purposes of the California Fair Employment and Housing Act.

AB 375: School Employees Maternity and Paternity Leave. A certificated employee who exhausts all of his or her sick leave, and who continues to be absent as a result of an illness or accident, shall receive up to five (5) months of additional paid leave. The employees pay shall equal the difference between his or her salary and the sum paid to a substitute employee to fill the position. If a substitute is not employed, the certificated employee receives the difference between his/her salary and the amount that would have been paid to a substitute had the substitute been employed. This type of leave is referred to as “differential pay” leave. Under the new law, the differential pay benefit may be provided for up to twelve (12) weeks if a certificated school employee is absent on account of maternity or paternity leave. To qualify for the benefit, the employee must have exhausted all available and accumulated sick leave. The 12-week period, however, will be reduced by any period of sick leave. A certificated employee is only entitled to up to one 12-week period per birth/placement of a child. If the school year terminates before the 12-week period is exhausted, the employee may take the balance in the subsequent school year. Employees who receive differential pay shall receive no less than the employee’s salary less pay made to a substitute, or in the event that a substitute is not hired, the amount that would have been paid to a substitute.

AB 579: Changes to Kin Care and Sick Leave Laws. The new bill provides for changes in definitions to harmonize the Kin Care law with the recently adopted Paid Sick Leave law (effective July 1, 2015).

- **Part I**

Kin Care laws have changed the definition of “kin” to coincide with the Paid Sick Leave laws. The new law defines an employee’s family members as: the employee’s self, child, parent, spouse, registered domestic partner, grandparent, grandchild, sibling, and the employee as a victim of domestic violence or stalking.

- **Part II**

Current law provides that employers must allow employees who are “parents” of children in licensed day care facilities, or in grades 1-12 up to 40 hours of leave per year for “child related activities.” The **new law** now defines a “parent” as a parent, stepparent, foster parent, or grandparent of a person, who stands in loco parentis. “Child related activities” now includes finding, enrolling or reenrolling a child in a school or licensed day care facility.

AB 622: E-Verify System as Unlawful Business Practice. This **new law** expands the definition of an unlawful employment practice to include an employer or any other person or entity using the E-Verify system when not required by federal law to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment, as required by federal law, or as a condition of receiving federal funds. Employers that use the E-Verify system are also required to provide the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee’s E-Verify case or any tentative non-confirmation notice “as soon as practicable.” The bill provides for a civil penalty of \$10,000 for an employer for each violation of its provisions.

AB 915: Public School Employees Receiving Workers’ Compensation. Certificated and classified employees of a school district and academic and classified employees of a community college district are allowed 60 days of paid leave for an absence arising out of an industrial accident or illness, per accident or illness. This type of leave does not accumulate from year to year. Under current law, an employee who receives these benefits may not travel outside of the State of California during periods of injury or illness unless the governing board of the school district or community college district authorizes the travel. AB 915 removes the travel restriction placed on an employee receiving these benefits.

AB 963: “Creditable Service” Expansion for Certificated Employees. Previously, STRS members transferring to non-creditable positions were required to elect to remain STRS members. This new legislation allows employees to retain STRS membership unless the employee affirmatively elects to transfer to a different public retirement system upon transfer to a non-creditable position. Former STRS members who transferred to another public retirement system under the prior law will be given an chance to transfer back to STRS membership. An election to transfer back into STRS membership must be made in writing and filed with STRS by June 30, 2016. The new legislation also expands the definition of creditable service to include activities that do not otherwise meet the definition of creditable service but were performed for an eligible employer on or before December 31, 2015 and that were reported as creditable service

to STRS. AB 963 also amends the Education Code to clarify which employees are eligible for STRS membership. The following classes of employees are eligible for membership in STRS if they perform "creditable service" as defined by the Education Code:

- Certificated employees in pre-kindergarten through grade 12;
- A faculty member in an academic position or an educational administrator in a community college district;
- Eligible charter school employees of a charter school eligible to receive state apportionment;
- Superintendents of California public schools and presidents and chancellors of community colleges; and
- Teachers who are employed on a consulting basis to participate in the California Peer Assistance and Review Program.

AB 987 – FEHA Protection for Requests for Reasonable Accommodations. The *new law* will prohibit any employer from retaliating or otherwise discriminating against an employee for requesting accommodation of his or her disability or religious beliefs, regardless of whether the accommodation request was granted or not.

AB 991: Cash Balance Benefit Program. Existing law allows an employer to participate in the CalSTRS Cash Balance Benefit Plan to perform creditable service on a temporary basis, or as a substitute. The *new law* will make the following changes in definitions under the respective code provision:

- "Leave of Absence" for purposes of compensation credit is now defined as leave that is "expressly authorized or required" by the statute.
- "Credited Service" is now defined as service for which the required contributions have been paid as well as service for which required contributions would have been paid in absence of the limit prescribed in 26 U.S.C. 401(a)(17) (i.e. \$200,000).
- Substitute employees are now eligible for the Cash Balance Benefit Program, if such an employer chooses to participate in it.
- Lump sum payments from the Cash Balance Benefit Program shall not be made before 180 days have elapsed after the termination of employment.

- If a person performs creditable service within that 180 days, the application for the lump sum shall be considered canceled.

AB 1509: Expanded Employer Liability for Discrimination. Existing law prohibits an employer from discriminating, retaliating, or taking any adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct, as specified. The *new law* will extend these provisions as specified, to an employee who is a family member of a person who engaged in, or was perceived to engage in, the protected conduct or make a complaint protected by these provisions. The *new law* also spreads financial responsibility for retaliation by a staffing firm or other labor contractor to the “client employer,” which is defined as “[a] business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.”

SB 216: Returning CalPERS Employees. Any member of the CalPERS employee returning to service after an employer-approved leave of absence for serious injury or illness may elect to receive service credit for that period of uncompensated absence at any time prior to retirement by paying the balance of contributions due for that period.

SB 358: Equal Pay. Employers may not pay rates less than the rates paid to the opposite sex for *substantially similar work*, unless the employer can demonstrate one (or more) of the following factors:

- The wage differential is based on a seniority system
- The wage differential is based on a merit system
- The wage differential is based on quantity or quality of production
- A good faith factor that is not based on a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with an overriding legitimate business purpose.
 - *Note:* if it can be shown that an alternative practice would serve the same business practice, this defense cannot be used

Further, Employers may not discriminate or retaliate against an employee or someone who assists an employee in enforcing this statute, including employees who discuss wages while at work. Employers who violate this statute will be liable to the employee for (i) wages, (ii) interest on those wages, and (iii) an equal amount in liquidated damages.

PUBLIC CONTRACTS

AB 219: Concrete Delivery. For “Public Works” contracts, concrete delivery for the purpose of completing a public works contract will now also be defined as a “Public Works” contract, thus requiring subcontractors to follow rules such as paying prevailing wages and following anti-discrimination rules.

AB 327: Volunteers in Public Works Contracts. Existing “Public Works Contracts” laws will continue to remain inapplicable to individuals working as volunteers for the contract until 2024.

AB 552: Public Works Contracts “Delay Damages” Clauses. “Delay Damages” clauses in contracts executed *on or after* January 1, 2016, will not be enforceable *unless* the damages have been liquidated and identified in the contract. Regardless of the liquidated damages safe harbor, these damages cannot be collected after either (i) a notice of completion has been filed, or (ii) the agency has accepted the work as complete.

AB 566: School Property Construction Leases. Under existing law, school districts are allowed to lease their own property for construction purposes pursuant to the following provisions:

- **Part I**

A school district may lease its property for a nominal fee, without competitive bidding so long as the lessee is required to construct a building to be used by the district for the term of the lease, and the building will become the district’s property at the end of the lease. Existing law also allows a school district to enter into a contract with the lowest responsible bidder

The ***new law*** will require contractors involved in the construction of the building to meet the same pre-qualification criteria as those bidding for public contracts. The ***new law*** will also require that any new contracts pursuant to this section shall mandate that the contractor and its subcontractors at every tier of the construction/contract will use a skilled and trained workforce to perform work in all apprenticeable occupations, as defined.

- **Part II**

School districts may enter into construction contracts with the lowest responsible bidder for the construction of a building on a designated site to be leased to the district so long as the building and the site will become the district's property at the end of the lease.

The **new law** will also require that any new contracts pursuant to this section shall mandate that the contractor and its subcontractors at every tier of the construction/contract will use a skilled and trained workforce to perform work in all apprenticeable occupations, as defined.

AB 1358: School District Design-Build Contracts. Existing law provides that a school district may enter into a design-build contract for both the design and construction of a school facility if that expenditure will exceed \$2.5M, upon a determination by the board that is in the best interest of the District. The **new law** will lower this cost threshold to \$1M on July 1, 2016, and require prequalification changes as provided.

AB 1431: Job Order Contracting Now Permitted for All School Districts. Prior to the passage of this law, Job Order Contracting was only allowed for the Los Angeles Unified School District. These contracts are for a fixed term or dollar amount, requiring a contractor to perform various job-order tasks over the life of the contract. The **new law** allows these types of contracts for all school districts. There are various limits and requirements for costs of the contracts, and qualifications of the contractors.

SB 331: Civic Openness in Negotiations: Known by the acronym "CRONEY" (i.e., the "Civic Reporting Openness in Negotiations Efficiency Act"), requires that agencies that have adopted COIN ("Civic Openness in Negotiations") ordinances to comply with new requirements including independent auditor review of the cost of any proposed agency contract, public disclosure of all offers and counteroffers on the agency's website, specific disclosures about each negotiation session regarding that contract, disclosure of communications with representatives of the counterparty to the negotiations, and no fewer than two public hearings on the contract decision before a final determination can be made.

SB 703: Public Contracts and Gender Discrimination. Under the **new law**, State Agencies would be prohibited from entering into a contract for the acquisition of goods or services for \$100,000 or more where the contractor, in providing benefits, discriminates on an employee's or dependent's actual or perceived gender.

ADMINISTRATION / GENERAL

AB 169: Open Data and the Public Records Act. If a local agency (except a school district) maintains an Internet resource (i.e. an Internet website, Internet web page, or Internet web portal, etc.) which local agency describes or titles as “open data,” and the local agency voluntarily posts a public record on that Internet resource, then this bill requires the local agency to post the public record in an open format that meets specified requirements, including, among others, that the format is able to be retrieved, downloaded, indexed, and searched by a commonly used Internet search application.

AB 243: Medical Marijuana. This bill would require a multi-agency task force to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. Under the law, Cities and Counties would retain certain licensing privileges for the cultivation of marijuana within its respective jurisdiction.

This bill would also require a state licensing authority to charge each licensee under the act certain licensure and renewal fees, as applicable, and would further require the deposit of those fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, established by this bill. Money in the fund and each account of the fund would be available upon appropriation of the Legislature.

It should be noted that as of the date of this memorandum, AB 21, legislation that would repeal/soften some of provisions AB 243 is working its way through the California and has a strong chance of passing in the form of urgency legislation that will take effect immediately. Please contact our office prior to March 1, 2016 if you have any special concerns.

AB 266: Medical Marijuana Statewide Regulatory Scheme. Provides for dual licensing (i.e. state and local licensing) with power remaining in either City or State to revoke license, and automatically terminate the ability of the business to operate. The bill would also set cultivation caps, prohibit licensees from also selling alcohol, and maintain local public agency licensing practices. The bill also creates uniform health and safety standards relating to testing, security and transportation of medical marijuana. The bill also phases out existing models of collectives and cooperatives after one year after the announcement of state licensing.

SB 11 and SB 29: Peace Officer Training and Mental Disability. This law adds training requirements for California peace officers in the handling of persons with

developmental disabilities and mental illness. The training must be implemented by August 1, 2016.

SB 21: Non-Profit Travel Gifts. This law requires non-profit organizations that regularly organize and host travel for elected officials, and pays for the travel to disclose the names of who in the preceding year, both donated to the nonprofit organization and accompanied an elected official for any portion of the travel. The person who receives the gift of a travel payment from any source must report the destination of travel on his or her statement of economic interests.

SB 178: Government Search Warrants for Electronic Communications. Government entities are prohibited from compelling the production of or access to electronic communication information or electronic device information, as defined, without a search warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant under specified conditions, except for emergency situations, as defined. Search warrants for electronic information must describe with particularity the information to be seized. The bill also further imposes other conditions on the use of the search warrant or wiretap order and the information obtained, including retention, sealing, and disclosure. The law now requires warrants directed to a service provider to be accompanied by an order requiring the service provider to verify by affidavit the authenticity of electronic information that it produces, as specified.

SB 272: Public Records Act. Each local agency (except school districts) shall create a catalog of “enterprise systems” that is publicly available upon request. If the agency has a website, the catalog shall be prominently posted on the agency’s website. “Enterprise system” means a software application or computer system that collects, stores, exchanges, and analyzes information that the agency uses that is both of the following:

- A system that contains information collected about the public; and
- A system that serves as an original source of data within an agency.

“Enterprise Systems” generally **do not** include computer systems involving security, monitoring and other control systems, infrastructure control systems, and systems related to dispatch of emergency services.

SB 330: Public Officer Conflicts of Interest. Under the existing law, a public officer has a “remote financial interest” requiring disclosure if the officer is a parent voting on a contract that affects his or her minor child’s income. Under the **new law**, a public officer has a “remote financial interest” in a contract if the contract being voted upon has (i) any

effect on officer's spouse's, parents', child's or sibling's income; or (ii) any effect on the spouse's of the officer's parents', child's or sibling's income. Failure to disclose this interest will result in an **added** criminal penalty for the officer under Cal. Gov't. Code 1097 (i.e. \$1,000 fine, imprisonment, prohibited from forever holding office).

SB 415: Political Subdivision Elections. This bill mandates that political subdivisions (including cities and school districts) run their elections concurrent with State if their prior elections held on other dates resulted in a significant decrease in voter turnout. A "significant decrease in voter turnout" means the voter turnout for a regularly scheduled election in a political subdivision is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections. A subdivision may hold an election on a non-concurrent date, if by January 1, 2018, the subdivision has adopted a plan to consolidate future elections.

This bill may not be applicable due to the exception described above; however, it may be a good idea for political subdivisions to start preparing for plans to consolidate future elections now.

SB 570: Personal Information Privacy Breach. Current law requires a person or business conducting business in California and any agency that owns or licenses computerized data that includes personal information to disclose a breach of the security of the system in the most expedient time possible without unreasonable delay.

The **new law** will require security breach notifications to be titled, "Notice of Data Breach." The required content of this notice must be presented under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." In addition to other requirements, conspicuous posting of the notice on the notifying entity's Internet Web site, if it maintains one, must occur for a minimum of 30 days.

SCHOOLS

AB 32: Racial Intolerance. The name "Redskins" shall not be used as any scholastic athletic team's name.

AB 146: Social Sciences Instruction. In grades 7-12, Social Sciences instruction may now include the illegal deportations of Mexican Immigrants during the Great Depression. The State Department of Education will be developing curricula and materials to facilitate this instruction.

AB 215: Cash Settlement for Superintendent Contracts. For Superintendent contracts executed on or after January 1, 2016, the maximum cash settlement for the employee shall be an amount equal to the monthly salary of the employee multiplied by 12 in the case of termination. If a school district believes and later confirms the Superintendent committed fraud, misappropriated funds, or engaged in other illegal fiscal frauds, no settlement *in any amount* need be given in the case of termination.

AB 271: Child Care Facilities. Child Care facilities may now use alternative forms of payment and electronic signatures to verify documents and/or payments, provided proper notice is given that the facility intends the signature to be binding as a “wet” signature.

AB 300: Active Military Parent. School Districts shall not prohibit the transfer of a pupil who is the child of an active military parent to any other District where the transferee District has approved the transfer.

AB 302: Discrimination Against Lactating Pupils. Any school district with at least one lactating student, may be liable for discrimination if it does not provide *at least* the following reasonable accommodations.

- Access to a private and secure room, other than a restroom, to express breast milk or breast-feed an infant child.
- Permission to bring onto a school campus a breast pump and any other equipment used to express breast milk.
- Access to a power source for a breast pump or any other equipment used to express breast milk.
- Access to a place to store expressed breast milk safely.
- A reasonable amount of time to accommodate the student’s need to express breast milk or breast-feed an infant child.

AB 329: Sex Education. Existing law mandates that sexual education and HIV prevention be taught at least once in middle school, and once in high school. The *new law* provides for various specific areas in which instruction must be given, as specific in Cal. Education Code section 51934.

AB 331: LACOE Oversight. The Los Angeles County of Education may decrease District Board membership from 5 to 3 members where the District's average daily pupil attendance is less than 500 in any preceding year.

AB 625: District Use of Emergency Apportionment Funds. For any school district using emergency apportionments to operate due to low revenues, the District Superintendent, State Superintendent and State Controller must now have a meeting to discuss the terms and timeline of any audits as a result.

AB 827: LGBT Anti-Discrimination Information. Existing law requires the State Department of Education to assess whether local education agencies have adopted a policy that prohibits discrimination, harassment, intimidation, and bullying, as specified, and has publicized that policy to pupils, parents, employees, agents of the governing board, and the general public. The *new law* will also require the State Department of Education to assess whether local education agencies have provided to certificated school site staff in grades 7-12 information on existing school site and community resources related to the support of lesbian, gay, bisexual, transgender, and questioning pupils.

AB 881: Expansion of Electronic Bullying Offense. Under the previous law, students were only allowed to be recommended for expulsion and/or suspension for Electronic Bullying where students both (i) created the electronic act (e.g. Facebook post) AND (ii) transmitted the electronic act. The *new law* makes it so that any student who either (i) creates an electronic act, OR (ii) sends an electronic transmission that was not created by the student may be recommended for suspension and/or expulsion.

AB 1058: Child Abuse "Best Practices." The State Department of Education shall establish "best practices" for school personnel to use in preventing child abuse (including personnel on student abuse). Also note, that this may, in the future, supplant the standard of care in certain negligence cases regarding the prevention of Child Abuse (particularly sexual abuse) in schools.

AB 1101: Mandatory Policy on Pupil Investigations re Residency. In order for the Board to investigate whether any student meets the residency requirements of the District, the Board must adopt a policy that:

- Identifies circumstances upon which the District may initiate an investigation, requiring the District be able to identify specific, articulable facts supporting the belief that the Parent or guardian of the pupil has provided false or unreliable evidence of residency;

- Describe the methods of investigation to be used by the District, including the use of a private investigator;
 - The District itself must make some effort to investigate prior to hiring a private investigator.
- Prohibit the covert recording/photographing of pupils are being investigated.
- Each individual, contractor and/or agent of the District involved in the investigation must truthfully identify themselves during the course of the investigation.
- Provide for an appeals process to the findings of the investigation.

AB 1369: Dyslexia Guidelines. The State Superintendent will create guidelines for school district use in determining if a child has dyslexia as a disability, making the student eligible for special education and related education plans. The guidelines are expected to be ready for use in the 2017-18 schoolyear.

AB 1391: Mandatory Physical Activity Complaints. Any District's Uniform Complaint Process may now be utilized for an elementary or middle school district's failure to comply with the "200 minutes of physical activity per 10 days" rule.

SB 186: Sexual Exploitation is "Good Cause." Revises sections of the Education Code to provide that sexual assault or sexual exploitation constitutes "good cause" for removal, suspension, or expulsion of a community college student, regardless of whether the victim is affiliated with the community college district.

SB 200: Pupil Residency Requirements Addition. This bill would provide that a pupil complies with a school district's residency requirements where the pupil's parent or legal guardian resides outside of the boundaries of that school district but is employed *and* lives with the pupil at the place of his or her *employment* within the boundaries of the school district for a minimum of 3 days during the school week.

SB 210: Deaf and Hard-of-Hearing Children, IEP and IFSP Use. *New law* requires the State Department of Education's Deaf and Hard-of-Hearing Unit to select developmental language milestones to monitor deaf and hard-of-hearing children's (ages 5 and younger) expressive and receptive language acquisitions for use in 2017.

- The law will further require school district IEP and IFSP teams to monitor a deaf or hard-of-hearing child's expressive and receptive language acquisitions according to the selected speech and language milestones.
- IEP and IFSP teams will have to suggest specific strategies, services and programs that shall be provided to deaf and hard-of-hearing children who do not demonstrate progress in achieving the milestones.

Such milestones shall be selected on or before June 30, 2017.

SB 222: Statutory Liens on School Bonds. Where a school district petitions the voters in a district on whether the bonds of the district shall be issued or sold to raise money for certain projects or facilities, a lien will automatically be put on the district's revenues to satisfy the bonds.

SB 242: Receipt of Surplus Military Equipment. For school districts that also have established a police department, no district can receive surplus military equipment *unless*:

- The Board votes to approve the acquisition of surplus military equipment at a regularly scheduled board meeting.
- The Board provides parents, guardians, and other members of the public to comment in open session regarding the proposed acquisitions.
- The Board provides a detailed description of the function and purpose of the equipment to be received.
- The Board identifies the safe and secure storage of the equipment.
- The Board ensures that peace officers employed by the District's Department have adequate training in the safe use of the equipment.

SB 276: MediCal Billing for District Health Providers. Under existing law, Districts may enter into an agreement with the California Department of Health and Safety in order to become a "LEA MediCal Provider." Existing law also allows a District to bill recipients of these services for treatments. The *new law* would allow a District, if it pursues all reasonable claims for services, to be eligible for repayment for those services from federal Medicaid sources.

Note: this law is subject to the California Department of Health and Safety meeting certain Federal Qualifications.

SB 445: Homeless Pupils. If a student becomes homeless, the district shall allow the student to continue in the school of origin throughout the duration of the homelessness. Where the student is in grades 1-8, and if a student's status changes so that he or she is no longer homeless, the student shall be allowed to continue in the school of origin throughout the rest of the academic year. If a student is transitioning between grade levels, the school district shall allow the homeless student to continue in the school district of origin in the same attendance area. If a student is transitioning to a middle or high school of another district, the new district must accept the student in the designated matriculation school despite the student's inability to pay fees for enrollment and/or produce uniforms, and despite the student's past due fees.

SB 707: Gun-Free School Zone Act. Under current law, certain persons are exempt from both the school zone and the university prohibitions. The *new law* deletes reserve officers and individuals with a valid concealed carry permit from the exempt category. The *new law* also adds that active or honorably retired peace officers may carry weapons onto school grounds, as well as other changes as specified.

SB 708: Free Lunch Program Applications. In addition to providing paper applications for free lunch programs, districts may also provide online applications provided they meet certain specifications.