

# Daily Journal

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PERSPECTIVE

## 2017 is packed with new California employment laws

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Unlike many areas of the law, California's employment laws are constantly changing to meet the needs of the state's diverse and thriving economy. As always, the start of the new year brings various updates and changes to employment laws in California, and 2017 is certainly no exception. The new laws range from changes designed to protect transgender employees to laws designed to catch up with the state's growing technology-based gig economy. Here are a few of the most important changes to take effect this year:

### All-Gender Bathroom Bill

Transgender rights are receiving increased attention nationwide, and California lawmakers have taken notice. Beginning on March 1, businesses and any place of public accommodation must label any single-user bathroom facility as "all-gender" under Health and Safety Code Section 118600. Employers may no longer label single-user bathrooms as simply "male" or "female." The law is aimed at providing equal access to everyone, regardless of gender, including transgender individuals. California is moving the opposite direction of many other states, such as Texas and North Carolina, that have introduced legislation to restrict bathroom access based on gender assigned at birth. California employers will want to change their single-user bathroom signage to ensure that none are designated as solely for use by male or female employees. This will ensure that employers comply with both the new statute and the growing trend of the Equal Employment Opportunity Commission and California Department of Fair Employment and Housing anti-discrimination

guidance promulgated to protect transgender employees.

### California Equal Pay Act Updates

Last year, California's Equal Pay Act (Labor Code Section 1197.5) came into effect, prohibiting employers from paying employees of the opposite sex different rates for "substantially similar work," when performed with similar skill and working conditions. This year, the amended Equal Pay Act will expand these protections to cover race and ethnicity. Additionally, an employer may not rely on prior salary alone to justify paying different salaries to employees performing similar work. The law seeks to halt the discriminatory effects of inquiring about prior salary history for women and minorities, who are historically paid less. If a woman earns a lower salary at a previous job, she may continue to earn a lower salary at any subsequent job if employers are able to consider past salary history. California has not taken the extreme approach of Massachusetts, which recently enacted a law prohibiting employers from asking prospective employees about their salary history at all. California employers may inquire about past salary history, but they must be able to point to some objective criteria to show why employees are paid different amounts for substantially the same work. The law is a step toward closing the wage gap, at the cost of a potential increase in employment litigation.

### Employment Contracts Venue and Choice of Law Clauses

Multi-state employers often include provisions in employment contracts that require all of their employees to litigate or arbitrate any claims in the employer's home state and under the home state's laws. Labor Code Section 925 now voids such provisions that apply to

California-based employees. Employment contracts entered into, modified, or extended on or after Jan. 1 cannot include a venue or choice of law clause. Such provisions are voidable by the employee, and an employee who successfully voids the provisions may be entitled to attorney's fees. Out-of-state employers will feel the practical effect of the law: the burden of coming to California to litigate or arbitrate employment claims under California law.

### Unfair Immigration Practices

California lawmakers have also enacted Labor Code Section 1019.1 to protect employees from unfair immigration practices by employers during the employment verification process. Employers may not request more or different verification documents than those required under federal law. Employers must also take the documents at face value and honor documents that reasonably appear to be genuine. Employers may also not refuse to honor documents based on the status of the authorization to work, such as individuals with an Employment Authorization Document under the Deferred Action for Childhood Arrivals program. Lastly, employers may not attempt to re-verify a current employee's authorization to work using any of the aforementioned unfair immigration practices. Employers should be mindful of asking detailed and prodding questions about a prospective employee's immigration or citizenship status to avoid potential unfair immigration practices. Penalties for violations are incredibly high, up to \$10,000 per violation, in addition to equitable relief.

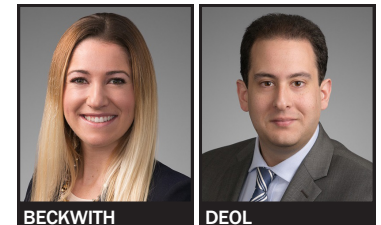
### Transportation Network Companies

New laws regulating transpor-

tation network companies (TNCs) are also coming into effect. Transportation network companies are rideshare companies, such as Uber and Lyft. A lawsuit filed against TNCs in 2014 alleged that TNCs mislead its customers by indicating they had tough background checks for drivers after multiple drivers were found to have serious criminal records. In response, California enacted Public Utilities Code Section 5445.2 requiring TNCs to conduct, or have a third party conduct, criminal background checks for drivers. Under the new law, a TNC is prohibited from contracting with drivers who are registered sex offenders and with drivers convicted of certain felonies, misdemeanor assault or battery, domestic violence or drunk driving within the last seven years.

With the above changes already in effect or set to go into effect soon, California employers and employees face a steep learning curve this year. California's newest laws affecting the workplace will require updating forms, policies, practices and even bathroom facilities. While the laws listed above are not the only changes to affect the employer-employee relationship in California this year, they demonstrate the state Legislature's ever-growing interest in remaining at the forefront with regard to employment law and policy in the United States.

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