

2015

2015 Legislative Summary

Assembly Committee on Labor and Employment

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ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
ROGER HERNÁNDEZ, CHAIR
ASSEMBLYMEMBER, FORTY-EIGHTH DISTRICT

October 2015

STATE DEPOSITORY

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Dear Friends:

As Chair of the Assembly Committee on Labor and Employment, I am proud to submit this annual report summarizing legislation the Committee heard and voted on during the 2015 legislative year.

This year continued a recent trend of monumental success for workers and working families in California. I am extremely proud of the work we have accomplished to advance the interests of employees, working families, and businesses.

Much of my focus in 2015 centered on protecting workers from being forced to waive enforcement of important labor and employment rights as a condition of employment. Between 2012 and 2014, the number of employers that forced workers to sign such agreements tripled. Therefore, I introduced AB 465, a bill to ensure that such waivers are knowing, voluntary, and not made a condition of employment. Unfortunately, this measure was vetoed by Governor Brown.

Much national debate in 2015 focused on continued concerns regarding gender pay inequality, and our Committee heard three important bills this year to address this issue. AB 1017 (Campos) addresses perpetuation of gender pay inequality by prohibiting employers from inquiring about salary history during the hiring process. AB 1354 (Dodd) proposed to strengthen nondiscrimination program requirements for state contractors. In addition, SB 358 (Jackson) updates and revamps California's Equal Pay Act, making it the strongest law in the nation. SB 358 was signed into law; however, AB 1017 and AB 1354 were vetoed by Governor Brown.

In recent years, much debate has focused on wage theft and the inability of low-wage workers to collect on unpaid wage claims adjudicated in their favor. That discussion culminated in SB 588 (De León), key legislation that will provide the Labor Commissioner with important tools to ensure that workers are able to recover unpaid wages. SB 588 was signed into law by Governor Brown.

AB 359 (Gonzalez), which was signed into law by the Governor, enacts important grocery worker retention requirements when large grocery stores change ownership. This bill will protect workers during such transition periods and will help ensure that grocery workers are able to keep their jobs and support their families. In addition, AB 219 (Daly) will strengthen California's prevailing wage laws by ensuring that ready-mix concrete work is included in the requirement to pay prevailing wages on public works projects.

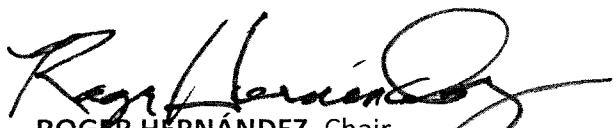
The Committee also heard several bills to assist employers in avoiding or reducing litigation related to employment laws. AB 1506 (Roger Hernández) will allow employers to remedy minor paystub violations before facing litigation for civil penalties. AB 1513 (Williams) will clarify the law related to the compensation of piece rate workers for breaks and nonproductive time, and will provide a mechanism for employers to make workers whole for back liability while avoiding significant civil penalties. AB 621 (Roger Hernández) provides a voluntary amnesty program for port motor carriers that wish to come forward and properly classify their drivers as employees rather than independent contractors. Each of these bills was signed into law.

Increasing the minimum wage continued to be a subject of much discussion at the federal, state and local levels in 2015. The Committee debated and passed SB 3 (Leno), a bill that would increase the state minimum wage to \$13 in 2017 and index it for inflation beginning in 2019. SB 3 was made a two-year bill in the Assembly Appropriations Committee.

In conclusion, 2015 represented a monumental year in legislation that will protect California's workers and working families. I am extremely proud to have served as Chair of the Assembly Committee on Labor and Employment and look forward to continuing efforts to restore California's middle class in 2016.

This report briefly describes the bills heard by the Committee in 2015. I have also included for your information the Governor's veto messages. For the full text of all versions of any bill, committee analyses, and history including votes, please go to the Assembly's web page at www.assembly.ca.gov and click on "legislation." If you need additional information, please contact the Committee staff at (916) 319-2091.

Sincerely,



ROGER HERNÁNDEZ, Chair

Assembly Committee on Labor and Employment

ASSEMBLY BILLS

AB 11 Gonzalez Paid Sick Days: In-Home Supportive Services

This bill would amend legislation enacted in 2014 (AB 1522 - Gonzalez) related to paid sick days to extend coverage to employees who are in-home supportive services (IHSS) workers. IHSS workers were excluded from coverage under AB 1522.

Status: Held under submission in the Assembly Appropriations Committee.

AB 20 Alejo Undocumented Workers: California Agricultural Act

The bill would establish framework for a program to provide undocumented persons who are agricultural employees a permit to work and live in California if such a program were to be authorized by federal law.

Status: Held under submission in the Senate Appropriations Committee.

AB 67 Gonzalez Double Pay on the Holiday Act of 2015

This bill would require an employer with more than 25 employees to pay a worker a two times the worker's regular rate of pay for work performed on Thanksgiving.

Status: Failed passage on the Assembly floor; reconsideration granted.

AB 145 Gomez Public Benefits Reports

This bill makes a technical clean-up change to legislation enacted in 2014 (AB 1792 - Gomez), which required the preparation of an annual report regarding employers in the state with the largest number of employees who are beneficiaries of the Medi-Cal Program.

Status: Chapter # 358, Statutes of 2015.

AB 202 Gonzalez Cheerleaders: Employee Status

This bill was introduced following several high-profile cases involving professional sports cheerleaders who were alleged to have been misclassified as independent contractors or otherwise deprived of wages and other benefits of employment. The bill, for purposes of all of the provisions of state law that govern employment, requires a cheerleader who is utilized by a California-based professional sports team during its exhibitions, events, or games to be deemed an employee. The bill also requires the professional sports team to ensure that the cheerleader is classified as an employee.

Status: Chapter # 102, Statutes of 2015.

AB 219 Daly Public Works: Concrete Delivery

This bill is co-sponsored by the California Labor Federation, AFL-CIO, the Teamsters and the State Building and Construction Trades Council. This bill would expand the definition of "public works" to include the hauling and delivery of ready-mixed concrete. The bill requires the applicable prevailing wage rate to be the rate for the geographic area in which the concrete factory or batching plant is located. In addition, the bill requires the entity hauling or delivering ready-mixed concrete to enter into a written subcontract agreement with, and to provide employee payroll and time records to, the party that engaged that entity, as specified. Finally, the bill would provide that these provisions apply to public works contracts awarded on or after July 1, 2016.

Status: Chapter # 739, Statutes of 2015.

AB 251 Levine Public Works: Public Subsidies

Existing law excludes from the definition of "public works" a project wherein the use of public funds in "de minimis." This bill would provide that a public subsidy is "de minimis" if it is both less than \$250,000 and less than 2% of the total project cost. The bill specifies that those provisions do not apply to a project that was advertised for bid, or a contract that was awarded, before July 1, 2016.

Status: Vetoed by the Governor.

AB 272 Lackey Reserve Peace Officers: FEHA

This bill would make a person deputized or appointed by the proper authority as a peace officer an "employee" for purposes of employment discrimination under the California Fair Employment and Housing Act (FEHA).

Status: Vetoed by the Governor.

AB 304 Gonzalez Paid Sick Days

This bill is a follow-up measure to legislation enacted in 2014 related to paid sick days (AB 1522 – Gonzalez). This bill made a number of follow-up and clarifying changes to the accrual and other provisions of the new law. This bill contained an urgency clause and went into effect immediately when signed by the Governor on July 13, 2015.

Status: Chapter # 67, Statutes of 2015.

AB 326 Frazier Public Works: Wage and Penalty Assessments

Existing law provides that there is no liability for liquidated damages if a contractor, subcontractor, or surety deposits the full amount of the assessment or notice, including penalties, with the Department of Industrial Relations (DIR) to hold in escrow pending administrative or judicial review. This bill would require DIR to release the funds deposited in escrow plus interest earned to those persons and entities as expeditiously as possible following the conclusion of all administrative and judicial review. *Status: Two-year bill; Assembly Committee on Labor and Employment.*

AB 327 Gordon Public Works: Volunteers

This bill extends the sunset date on an existing exemption from public works law for specified "volunteers" until January 1, 2024. *Status: Chapter # 53, Statutes of 2015.*

AB 357 Chiu Fair Scheduling Act of 2015

Based on an ordinance recently enacted in San Francisco, this bill would have added provisions to law designed to provide employees with more predictable work schedules and advance notice of such schedules. Among other things, the bill would have required a food and general retail establishment, as defined, to provide its employees with at least two weeks' notice of their schedules. The bill also would have required a food and general retail establishment to pay those employees additional pay, as specified, for each previously scheduled shift that the food and general retail establishment moves to another date or time or cancels and each previously unscheduled shift that the employer requires an employee to work, and would also require a food and general retail establishment to pay those employees a specified amount for each on-call shift for which the employee is required to be available but is not called in to work. *Status: Two-year bill; Assembly floor.*

AB 359 Gonzalez Grocery Worker Retention

This bill was sponsored by the United Food and Commercial Workers Union. This bill, upon a change in control of a grocery establishment, requires an incumbent grocery employer to prepare a list of specified eligible grocery workers for a successor grocery employer, and requires the successor grocery employer to hire from this list during a 90-day transition period. The bill requires the successor grocery employer to retain eligible grocery workers for a 90-day period, prohibits the successor grocery employer from discharging those workers without cause during that period, and, upon the close of that period requires the successor grocery employer to consider offering continued employment to those workers. *Status: Chapter # 212, Statutes of 2015.*

AB 465 Roger Hernández Contracts Against Public Policy

This bill is sponsored by the California Labor Federation, AFL-CIO and is designed to protect workers from being involuntarily forced to waive enforcement of important labor protections as a condition of employment. AB 465 would prohibit any person from requiring another person, as a condition of employment, to agree to the waiver of any legal right, penalty, forum, or procedure for any employment law violations. The bill would also prohibit a person from threatening, retaliating against, or discriminating against another person based on a refusal to agree to such waiver, and would provide that any such waiver required from an employee or potential employee as a condition of employment or continued employment is unconscionable, against public policy, and unenforceable. The bill would require that any waiver of a person's employment rights, not prohibited by state or federal law, be knowing and voluntary and in writing, and expressly not made as a condition of employment. In addition, AB 465 would provide that a person seeking to enforce a waiver has the burden of proof to show that the waiver was, knowing and voluntary. Finally, the bill would apply to any waiver agreement entered into on or after January 1, 2016, and would authorize injunctive relief and an award of reasonable attorney's fees to the prevailing claimant.

Status: Vetoed by the Governor

AB 488 Gonzalez Rehabilitation: Dignity Stipend

This bill would define "dignity stipend" as the value provided by an employer to workers defined by the Department of Rehabilitation as eligible individuals with an intellectual or developmental disability severe enough to result in a substantial impediment to employment when the employer pays a special minimum wage to those workers, operates a community rehabilitation program certified by the Department of Rehabilitation that provides services to those workers, and the hourly wage plus the hourly cost of providing those services exceeds 125% of the California minimum wage rate for those workers. The bill would require the department to determine whether an employer that operates a community rehabilitation program provides a dignity stipend, when certifying the program.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 500 Waldron Independent Contractors

This bill would authorize a private employer, including a nonprofit entity, to deem a person an independent contractor, for a period not to exceed two years from the date of hire after successful completion of a drug or alcohol rehabilitation program if the person has no history of violent felony convictions and meets specified criteria.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 520 Levine Apprenticeship

Existing law requires the Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council to report annually through the Director of Industrial Relations on the activities of the division and the council, and further requires that the report include specified information with respect to apprenticeship programs in this state. This bill would require the report to include an analysis of any apprenticeship standards or regulations that were proposed or adopted in the previous year.

Status: Two-year bill; Senate Committee on Labor and Industrial Relations.

AB 561 Campos Agricultural Labor Relations

This bill is sponsored by the United Farm Workers and would make two primary changes to the Agricultural Labor Relations Act. First, the bill would require the Agricultural Labor Relations Board (ALRB) to process to final board order all decisions concerning make-whole awards, backpay, and other monetary awards to employees within one year or any board order finding liability for an award. Second, the bill would require an employer who appeals or petitions for a writ of review of any order of the ALRB under the act involving make-whole, backpay, or other monetary awards to employees to post a bond in the amount of the entire economic value of the order, as specified, and would provide for the bond to be forfeited under specified conditions.

Status: Vetoed by the Governor.

AB 578 Low Occupational Safety and Health

This bill addresses issued related to an employer's request of a variance from an occupational safety and health standard (which allows an employer permission not to follow a specified standard). Specifically, this bill would require an employer to give notice to workers at the place of employment who will be affected by a permanent or temporary variance, or representatives of affected workers, who may be affected by or exposed to the hazards by the permanent or temporary variance. In addition the bill would require any affected worker, or representative of affected workers, upon request, to be granted party status to the variance proceedings. Finally, the bill would require the variance application to include a certification that the employer has given notice to affected workers as required.

Status: Vetoed by the Governor.

AB 588 Grove Labor Code Private Attorneys General Act of 2004 (PAGA)

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment and provides that the employer does not have the right to cure a violation of that requirement before an employee may bring a civil action under PAGA. This bill would provide an employer with the right to cure a violation of that wage statement law requirement before an employee may bring a civil action under PAGA.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 621 Roger Hernández Motor Carrier Employer Amnesty Program

This bill is sponsored by the Teamsters, and would provide a limited amnesty to port trucking companies that enter into a settlement agreement with the Labor Commissioner to reclassify their drivers as employees rather than independent contractors. As part of the settlement agreement, the employer would be required to pay workers for wages previously unpaid, would be required to pay back taxes to the state, and would be required to reclassify its drivers as employees. In return, specified civil penalties would be forgiven.

Status: Chapter #741, Statutes of 2015.

AB 622 Roger Hernández E-Verify

This bill expands the definition of an unlawful employment practice under current law to prohibit an employer or any other person or entity from using the E-Verify system at a time or in a manner not required by a specified federal law or not authorized by a federal agency memorandum of understanding to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment, except as required by federal law or as a condition of receiving federal funds. The bill also requires an employer that uses the E-Verify system to provide to 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 nonconfirmation notice. Finally, the bill would provide for a civil penalty of \$10,000 for an employer for each violation of these provisions.

Status: Chapter #696, Statutes of 2015.

AB 669 Daly Minimum Wage: Qualifying Tipped Employees

As introduced, this bill would have established the minimum wage for a qualifying tipped employee, on and after January 1, 2016, at \$10 per hour. The bill would have defined "qualifying tipped employee" to mean an employee who regularly receives income from wages at a rate equal to at least 150% of the minimum wage, as described. The bill would have defined "wages" for these purposes to mean all remuneration for services performed by an employee for his or her employer, including tips received by an employee in the course of his or her employment.

Status: The labor provisions were subsequently amended out of this bill.

AB 676 Calderon Discrimination: Status as Unemployed

This bill, on and after July 1, 2016, would prohibit an employer from publishing an advertisement or announcement for a job that states or indicates that an unemployed person is not eligible for the job. The bill would prohibit an employer from asking an applicant for employment to disclose, orally or in writing, the applicant's employment status, until the employer has determined that the applicant meets the minimum employment qualifications for the position.

Status: Vetoed by the Governor.

AB 795 Low Wage Claims and Discrimination Complaints

As introduced, this bill would have required the Labor Commissioner to include in its report to the Legislature, specified information on the status of wage claims and retaliation complaints including the average amount of time it takes for a wage claim to receive a preliminary hearing and the current backlog of claims and complaints.

Status: The labor provisions were subsequently amended out of this bill.

AB 842 Patterson Contractors: Essential Health Benefits

This bill would have provided that a contractor that bids on or has been awarded work covered by a project labor agreement that provides health care coverage to workers on the project that is the subject of the agreement, that includes essential health benefits, and that provides evidence of that coverage to the entity awarding the contract, is exempt from a requirement to pay into a trust or custodial benefit plan for health and welfare or similar benefits for those workers an amount equal to the amount that the contractor would have been required to pay into that trust or custodial benefit plan for health care costs for those workers.

Status: Failed passage in the Assembly Committee on Labor and Employment.

AB 850 Ridley-Thomas Employment: Hospitals

This bill would require an employer who employs individuals in a general acute care hospital to minimize the risk of occupational exposure to virulent aerosol transmissible diseases, as defined, and to provide optimal protection from occupational exposure to pathogens and aerosolized body fluids, as specified. The bill would also require these employers to, among other things, provide any health care worker who enters the room of a specified patient with personal protection equipment and a powered air purifying respirator, as specified.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 852 Burke Public Works: Prevailing Wages

This bill would expand the definition of "public works," for the purposes of prevailing wage law, to also include any construction, alteration, demolition, installation, or repair work done under private contract on a project for a general acute care hospital, except on a project for a rural general acute care hospital with a maximum of 76 beds, when the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds, as defined, that were issued on or after January 1, 2016.

Status: Chapter # 745, Statutes of 2015.

AB 883 Low Employment: Public Employee Status

This bill would, on and after July 1, 2016, prohibit a state or local agency, as defined, from publishing or posting a job advertisement or announcement that states or indicates that an individual's status as a current or former public employee disqualifies an individual from eligibility for employment. The bill would, on and after July 1, 2016, also prohibit a state or local agency from asking an applicant to specifically disclose, orally or in writing, the applicant's status as a current or former public employee until the employer has determined that the applicant meets the minimum employment qualifications for the position.

Status: Vetoed by the Governor.

AB 897 Gonzalez Grocery Worker Retention

As discussed above, earlier this year, the Governor signed AB 359 (Gonzalez) related to grocery worker retention. However, the Governor's signing message requested clarifying changes to be enacted this year through subsequent legislation. Therefore, in response to the Governor's signing message, this bill specifies that a "grocery establishment" for purposes of the new law does not include a retail store that has ceased operations for six months or more.

Status: Chapter # 305, Statutes of 2015.

AB 970 Nazarian Labor Commissioner: Enforcement of Employee Claims

This bill would authorize the Labor Commissioner to investigate and enforce local laws regarding overtime hours or minimum wage provisions and to issue citations and penalties for violations, except when the local entity has already issued a citation for the same violation. The bill would prohibit a local entity from issuing a citation to the employer if the Labor Commissioner has already issued a citation to that employer for the same violation. The bill would additionally authorize the Labor Commissioner to enforce provisions of law related to expense reimbursements by issuing citations and penalties to employers for violations of these requirements, as specified.

Status: Chapter #783, Statutes of 2015.

AB 984 Calderon Use of Age Information in Employment

This bill would have prohibited an employer from using information regarding a person's age in making any employment decision regarding that person. The bill would also have provided that a commercial online entertainment employment service provider, as defined, who accepts payment from persons in California to post resumes and other information online, is subject to the anti-discrimination laws of California.

Status: Held under submission in the Assembly Appropriations Committee.

AB 987 Levine Employment Discrimination: Unlawful Employment Practices

This bill would prohibits an employer or other covered entity from retaliating or otherwise discriminating against a person for requesting accommodation of his or her disability or religious beliefs, regardless of whether the accommodation request was granted. This legislation is in response to a recent California Court of Appeal decision in *Rope v. Auto-Clor System of Washington, Inc.*, 220 Cal. App. 4th 635 (2013) and clarifies that an employee cannot be retaliated against for requesting a reasonable accommodation for a disability or religion.

Status: Chapter # 122, Statutes of 2015.

AB 1007 McCarty Minimum Wage

This bill would set the minimum wage on and after January 1, 2016, at the amount necessary to keep a family of three above the supplemental poverty level established by the United States Census Bureau.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 1017 Campos Employment: Salary History

One of several bills this year dealing with gender pay inequality, this bill would prohibit an employer from seeking salary history information about an applicant for employment, except as otherwise provided. Supporters of the bill argue that asking applicants about salary history perpetuates salary inequality impacting women.

Status: Vetoed by the Governor.

AB 1038 Jones Employment: Flexible Work Schedules

This bill would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to ten hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday, except as specified.

Status: Failed passage in the Assembly Committee on Labor and Employment; reconsideration granted.

AB 1065 Chiu Employment: Unfair Practices

This bill would make it an unlawful employment practice for an employer to request more or different documents than are required under federal law relating to verification that an individual is not an unauthorized alien, or to refuse to honor documents tendered that on their face reasonably appear to be genuine, or to discriminate against an immigrant with authorization to work based upon the specific status or term of status that accompanies the authorization to work, or to attempt to reinvestigate or re-verify an incumbent employee's authorization to work unless required to do so by federal law or authority.

Status: Held under submission in the Assembly Appropriations Committee.

AB 1158 Campos Prevailing Wage

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 authorizes the Governor, until January 1, 2016, to certify projects for certain CEQA streamlining benefits if the project meets certain conditions, including a condition that the project creates high-wage, highly skilled jobs that pay prevailing wages. Existing law requires the applicant of a project that is so certified to include this wage condition in all contracts for the performance of work for the project. This bill would specify that the above wage condition is subject to enforcement by the Division of Labor Standards Enforcement. The bill would make a project applicant who fails to pay, or fails to ensure the payment of, prevailing wages subject to the penalties for failure to pay prevailing wages on a public work.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 1270 E. Garcia California Workforce Innovation and Opportunity Act

This bill would update statutory references to the Workforce Investment Act of 1998 to instead refer to the Workforce Innovation and Opportunity Act of 2014 and make related conforming changes.

Status: Chapter # 94, Statutes of 2015.

AB 1308 Perea Apprenticeship Programs: Approval

Under existing law, the apprentice training needs in the building and construction trades are required to be deemed to justify a new apprentice program only if one or more specified conditions are met. This bill revises the conditions for when the apprentice training needs in the building and construction trades justify a new apprentice program. This bill also removes the authority of the California Apprenticeship Council to approve a new apprenticeship program justified by special circumstances by regulation.

Status: Chapter # 126, Statutes of 2015.

AB 1354 Dodd Discrimination: Equal Pay: State Contracting

This bill would enact the Equal Pay for Equal Work Act of 2015, which would require an employer with 100 or more employees in state, as specified, and a contract of 30 days or more, prior to becoming a contractor or subcontractor with the state, to submit a nondiscrimination program to the Department of Fair Employment and Housing and to submit periodic reports no more than annually of its compliance with that program. This bill would permit the department to require an employer with fewer than 100 employees in state or a contract of less than 30 days to submit a nondiscrimination report. In addition, this bill would require the nondiscrimination program to include policies and procedures designed to ensure equal employment opportunities for all applicants and employees, an analysis of employment selection procedures, and a workforce analysis, as specified.

Status: Vetoed by the Governor.

AB 1383 Jones Veterans Preferences: Voluntary Policy

This bill would enact the Voluntary Veterans' Preference Employment Policy Act to authorize a private employer to establish and maintain a written veterans' preference employment policy to give a voluntary preference for hiring or retaining a veteran over another qualified applicant or employee. In addition, this bill would provide that the granting of a veterans' preference pursuant to the bill, in and of itself, shall be deemed not to violate any local or state equal employment opportunity law or regulation, including, but not limited to, the antidiscrimination provisions of the California Fair Employment and Housing Act. Finally, this bill would revise the existing veteran status provision in the California Fair Employment and Housing Act to remove references to discrimination on account of sex and to Vietnam-era veterans, and would, instead, provide that nothing in that act relating to discrimination affects the right of an employer to use veteran status as a factor in hiring decisions if the employer maintains a veterans' preference employment policy established in accordance with the Voluntary Veterans' Preference Employment Policy Act.

Status: Two-year bill; Senate Judiciary Committee.

AB 1389 Patterson Agricultural Labor Relations

This bill would make a number of changes to the Agricultural Labor Relations Act, and was introduced in response to a recent dispute between the United Farm Workers of America and Gerawan Farms, Inc. First, this bill would have prohibited a labor organization from abandoning or failing to represent a bargaining unit for three or more years. The bill would have required the Agricultural Labor Relations Board to decertify a labor organization that violates this provision. Second, the bill would have deemed members of the bargaining unit to be parties for the purposes of contract mediation provisions of existing law. Finally, this bill would have conditioned the effect and enforcement of an order resulting from binding mediation on the order being approved by a majority of the members of the affected bargaining unit.

Status: Failed passage in the Assembly Committee on Labor and Employment; reconsideration granted.

AB 1470 Alejo Working Hours: Overtime

This bill would establish a rebuttable presumption that an employee is exempt from overtime pay if the employee earns total gross annual compensation of at least \$100,000 and regularly performs any of the exempt duties or responsibilities of an executive, administrative, or professional employee as set forth in the Industrial Welfare Commission Wage Orders. This bill, to rebut the presumption, would require evidence that the employee did not earn total gross annual compensation of at least \$100,000, that the employee did not earn at least \$1,000 per week, as specified, or that the employee did not regularly perform at least one exempt duty of an executive, administrative, or professional employee. This bill would only apply to an employee whose primary duty includes office or nonmanual work, as described.

Status: Two-year bill; Assembly Committee on Labor and Employment.

AB 1505 Roger Hernández Car Washes

As introduced, this bill would require a car wash employer to provide written notice to a successor employer regarding specified registration requirements of existing law prior to the sale or other transfer of the business.

Status: The labor provisions were subsequently amended out of this bill.

AB 1506 Roger Hernández Labor Code Private Attorneys General Act of 2004 (PAGA)

Existing law requires an employer to provide its employees with specified information regarding their wages, including, among others, the inclusive dates of the period for which the employee is paid and the name and address of the legal entity that is the employer, either semimonthly or at the time of each wage payment and provides that the employer does not have the right to cure a violation of that requirement before an employee may bring a civil action under PAGA. This bill provides an employer with the right to cure a violation of the requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under PAGA. This bill provides that a violation of that requirement shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee, as specified. This bill limits the employer's right to cure with respect to alleged violations of these provisions to once in a 12-month period, as specified.

Status: Chapter # 445, Statutes of 2015.

AB 1507 Labor Committee California Workforce Investment Act

As introduced, this bill would have updated statutory references to the federal Workforce Investment Act of 1998 to instead refer to the federal Workforce Innovation and Opportunity Act and made related conforming changes.

Status: The labor provisions were subsequently amended out of this bill.

AB 1508 Roger Hernández Underground Economy: Policy Advisor

This bill would require the Governor to designate an independent chief policy adviser for the underground economy. The bill would prescribe the adviser's duties, which would include monitoring the state's existing underground economy task forces and interagency partnerships to ensure that they are organized efficiently and evaluating whether any task forces and partnerships should be eliminated or restructured to improve effectiveness. The bill would require the adviser, on or before January 1, 2017, to submit a report to the Governor and the Legislature that summarizes the adviser's findings and recommendations, with a focus on recommended administrative or legislative changes.

Status: Two-year bill; Senate floor.

AB 1509 Roger Hernández Employment Retaliation

This bill makes two changes to California employment retaliation laws. First, the bill provides that an employer shall not retaliate against an employee because the employee is a family member of a person who has engaged in protected activity. Second, the bill provides that prohibitions against retaliation apply to a "client employer" or a "controlling employer." In addition, this bill enacts clarifying language related to AB 1897 (Roger Hernández) of 2014. Enacted last year, AB 1897 contained a limited exemption for certain subcontracting work performed by "motor carriers," as specified. It was assumed that this exemption also applied to certain "household goods carriers." However, those entities are regulated by a different code section than "motor carriers." Therefore, the amendments to this bill clarify that the same limited exemption applies to certain work performed by "household goods carriers," and cross-references the appropriate statutory citation.
Status: Chapter # 792, Statutes of 2015.

AB 1513 Williams Piece Rate Compensation

The bill clarifies that piece rate employees are to be compensated for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates, separately from any piece-rate compensation. The bill defines "other nonproductive time" for purposes of these provisions to mean time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis. In addition, this bill, until January 1, 2021, provides that an employer shall have an affirmative defense to any claim or cause of action for recovery of wages, damages, liquidated damages, statutory penalties, or civil penalties based solely on the employer's failure to timely pay the employee the compensation due for rest and recovery periods and other nonproductive time for time periods prior to and including December 31, 2015, if, by no later than December 15, 2016, the employer complies with specified requirements, subject to specified exceptions.
Status: Chapter #754, Statutes of 2015.

AJR 12 E. Garcia H1-B Visa Program: Investigation of Misuse

This measure was introduced following concerns regarding outsourcing of work and alleged misuse of the H1-B visa program by employers, including Southern California Edison. This resolution would urge the United States Department of Labor and the Congress of the United States to investigate alleged misuse of the H1-B Visa program.
Status: Two-year bill; Senate floor.

SENATE BILLS

SB 3 Leno Minimum Wage

This bill increases the minimum wage, on and after January 1, 2016, to not less than \$11 per hour, and on and after July 1, 2017, to not less than \$13 per hour. In addition, this bill would require, commencing January 1, 2019, the annual automatic adjustment of the minimum wage to maintain employee purchasing power diminished by the rate of inflation during the previous year. The adjustment would be calculated using the California Consumer Price Index, as specified.

Status: Two-year bill; Assembly Appropriations Committee.

SB 45 Mendoza Workforce Innovation and Opportunity Act (WIOA)

This bill would require the state, in conformity with WIOA and after consultation with local boards and chief elected officials, to identify planning regions. This bill would require local boards and chief elected officials to prepare regional plans for those planning regions, as specified. This bill would also require the California Workforce Investment Board to aid the Governor in facilitating system alignment across the core programs of WIOA, as defined, and make related and conforming changes.

Status: Two-year bill, Assembly Committee on Labor and Employment.

SB 327 Ed Hernandez IWC Wage Orders: Meal Periods

This bill provides that the health care employee meal period waiver provisions in specified existing wage orders were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. This bill states that it is declarative of, and clarifies, existing law. This bill was introduced in response to a recent decision of the California Court of Appeal in *Gerard v. Orange Coast Memorial Medical Center*, 234 Cal. App. 4th 285 (2015).

Status: Chapter # 506, Statutes of 2015

SB 342 Jackson California Workforce Investment Board

This bill requires the California Workforce Investment Board to assist the Governor in helping individuals with barriers to employment achieve economic security and upward mobility by implementing policies that encourage the attainment of marketable skills relevant to current labor market trends.

Status: Chapter # 507, Statutes of 2015

SB 358

Jackson

Gender Wage Differential

This bill makes a number of important changes to California's Equal Pay Act. First, this bill revises existing law to eliminate the requirement that the wage differential be within the same establishment, and instead would prohibit an employer from paying any of its employees at wage rates less than those paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, as specified. Second, this bill revises and recasts the exceptions to require the employer to affirmatively demonstrate that a wage differential is based upon one or more specified factors, including a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than sex, as specified. This bill requires the employer to demonstrate that each factor relied upon is applied reasonably, and that the one or more factors relied upon account for the entire differential. Third, this bill prohibits an employer from discharging, or in any manner discriminating or retaliating against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of these provisions. The bill authorizes an employee who has been discharged or discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in these provisions, to recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief. Finally, this bill prohibits an employer from prohibiting an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under these provisions.

Status: Chapter # 546, Statutes of 2015.

SB 406

Jackson

Employment: Family Leave

This bill makes various changes to the definitions under the California Family Rights Act, thereby expanding the persons and purposes for which leave is required to be provided under the act. Specifically, this bill redefines the term "child" to include a biological, adopted, or foster son or daughter, a stepchild, a legal ward, a son or daughter of a domestic partner, or a person to whom the employee stands in loco parentis, and removes the restriction on age or dependent status. This bill expands the definition of leave with regard to caring for persons with a serious health condition to also include leave to care for a grandparent, grandchild, sibling, or domestic partner who has a serious health condition. Finally, this bill includes a parent-in-law in the definition of "parent."

Status: Vetoed by the Governor.

SB 432 **Mendoza** **Public Works: Aliens**

Existing law, with certain exceptions, requires the payment of not less than the general prevailing rate of per diem wages, for work of a similar character in the locality in which a public works project is performed, to all workers employed on a public works project. With respect to the extension of public works, existing law extends preference for employment first to California citizens, next to citizens of other states who are in California at the time of application, and next to aliens who are in California at the time of application. Existing law defines “alien” as any person who is not a born or fully naturalized citizen of the United States. Under existing law, the Department of Finance is required to ascertain and secure from state agencies tentative plans for the extension of public works that are best adapted to supply increased opportunities for advantageous public labor during periods of temporary unemployment in the state. These employment opportunities are available according to the hiring preferences described above. This bill repeals this definition of “alien” and the provision requiring those preferences to be applied to the extension of public works employment during periods of unemployment in the state.

Status: Chapter # 160, Statutes of 2015.

SB 548 **De León** **Child Care: Family Child Care Providers**

As introduced, this bill would have authorized family child care providers, as defined, to form, join, and participate in the activities of provider organizations, as defined, and to seek the certification of a provider organization to act as the exclusive representative for family child care providers on matters related to state-funded child care programs pursuant to a petition and election process overseen by the Public Employment Relations Board or a neutral third party designated by the board.

Status: The labor provisions were subsequently amended out of this bill.

SB 579 **Jackson** **Employees: Time Off**

Existing law prohibits an employer who employs 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent, guardian, or grandparent having custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours each year for the purpose of participating in school activities, subject to specified conditions. This bill would revise references to a child day care facility to instead refer to a child care provider. The bill would include the addressing of a child care provider emergency or a school emergency, as defined, and the finding, enrolling, or reenrolling of a child in a school or with a child care provider as activities for which a parent having custody of a child shall not be discriminated against or discharged, as described above. The bill would define “parent” for these purposes as a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child, thereby extending these protections to an employee who is a stepparent or foster parent or who stands in loco parentis to a child.

Status: Chapter # 802, Statutes of 2015.

This bill would enact special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state. The bill would authorize the Labor Commissioner (LC) to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided. The bill would also authorize the LC to issue a notice of levy, as specified, if the levy is for a deposit, credits, money, or property in the possession or under the control of a bank or savings and loan association or for an account receivable or other general intangible owed to the judgment debtor by an account debtor. This bill would authorize the LC to provide for a hearing to recover civil penalties against any employer or other person acting on behalf of an employer, as defined, for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission, as specified. This bill would provide that any employer or other person acting on behalf of an employer, as defined, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, other related provisions of law is authorized to be held liable as the employer for such violation. This bill, beginning 20 days after a judgment is entered by a court of competent jurisdiction in favor of the LC, or in favor of any employee pursuant to an appeal, would authorize the LC to, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property, belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy. The bill would also require the judgment debtor to be served with a copy of the notice of levy. The bill would require any person who surrenders to the LC any credits, money, or property, or pays the debts owed to the judgment debtor to be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the LC as a result of the levy. The bill would make any person noticed with a levy who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor liable in his or her own person or estate to the LC in an amount equal to the value of the credits, money, or property or in the amount of the levy, as provided. If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a specified period of time after the time to appeal has expired and no appeal is pending, the bill would prohibit an employer from continuing to conduct business in this state, as specified, unless the employer has obtained a bond from a surety company and has filed a copy of that bond with the LC, as provided. As an alternative to the bond requirement, the bill would authorize the employer to provide the LC with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. The bill would make any employer conducting business without satisfying the bond requirement subject to a specified civil penalty, as provided. The bill, where an employer is conducting business in violation of the bond requirement, would authorize the LC to issue and serve on such employer a stop order prohibiting the use of employee labor by the employer until the employer complies with the bond requirement provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The bill would make the failure of an employer, owner, director, officer, or managing agent of the employer to observe a stop order guilty of a misdemeanor. Subject to required prior notice to the employer, the bill would

authorize the LC to create a lien on any real or personal property in California of an employer or a successor employer with respect to real property, as described, that is conducting business without satisfying the bond requirement for the full amount of any wages, interest, and penalties claimed to be owed to an employee, as specified. If a final judgment against an employer arising from the employer's nonpayment of wages remains unsatisfied after the time to appeal has expired and there is no pending appeal and an employer in the long-term care industry, as specified, is found to be conducting business without obtaining a bond or reaching an accord with an individual holding an unsatisfied judgment, this bill would authorize those departments to deny a new license or the renewal of an existing license. The bill would also authorize the LC to notify those departments of such a violation. The bill would require any individual or business entity that contracts for services in the property services or long-term care industries to be jointly and severally liable for any unpaid wages where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the LC in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract, as provided.

Status: Chapter #803, Statutes of 2015.

SB 599 Mendoza Employment: Public Service Transit Contracts

Existing law requires a local government agency to give a 10% preference to any bidder on a service contract to provide public transit services who agrees to retain employees of the prior contractor or subcontractor for a period of not less than 90 days, as specified. This bill would expand these provisions to require a state agency to also give a 10% preference to any bidder under these provisions.

Status: Vetoed by the Governor.

SB 730 Wolk Railroads: Movement of Freight: Crew Size

This bill prohibits, on and after February 1, 2016, a train or light engine used in connection with the movement of freight, as specified, from being operated unless it has a crew consisting of at least two individuals. This bill authorizes the Public Utilities Commission to assess civil penalties against any person who willfully violates this provision, as specified.

Status: Chapter # 283, Statutes of 2015.

GOVERNOR'S VETOES

AB 251 Levine

I am returning Assembly Bill 251 without my signature.

This measure seeks to codify a definition of the term 'de minimis' to determine what level of public subsidy triggers prevailing wage requirements on an otherwise private project.

Longstanding practice has been to view the subsidy in context of the project and use 2% as a general threshold for determinations. There has been no showing that the current practice is unreasonable.

While I remain a staunch supporter of prevailing wages I am concerned that this measure is too restrictive and may have unintended consequences. Two years ago, I cited the same concerns when I returned a similar bill without my signature. This measure does not adequately address those concerns.

Edmund G. Brown Jr.

AB 272 Lackey

I am returning Assembly Bill 272 without my signature.

This bill would impose, for the first time, liability upon public entities for claims of discrimination brought by volunteer peace officers.

Last year I signed AB 1443, which afforded protection against harassment to all volunteers, including peace officers. That bill makes sense, but I am not convinced that the expanded liability included in this bill does.

Edmund G. Brown Jr.

AB 465 **Roger Hernández**

Assembly Bill 465 would outlaw the use of mandatory arbitration agreements as a condition of employment, making California the only state in the country to have this particular prohibition.

I have reviewed in depth the arguments from both sides about the fairness and utility of mandatory arbitration agreements. While most evidence shows that arbitration is quicker and more cost-effective than litigation, there is significant debate about whether arbitration is less fair to employees. The evidence on actual outcomes in arbitration versus litigation is conflicting and unclear, with some studies showing employees receive more in arbitration while other studies show the opposite.

While I am concerned about ensuring fairness in employment disputes, I am not prepared to take the far-reaching step proposed by this bill for a number of reasons.

California courts have addressed the issue of unfairness by insisting that employment arbitration agreements must include numerous protections to be enforceable, including neutrality of the arbitrator, adequate discovery, no limitation on damages or remedies, a written decision that permits some judicial review, and limitations on the costs of arbitration. See, e.g., *Armendariz v. Foundation Health Psychcare Services, Inc.* 24 Cal. 4th 83 (2000). If abuses remain, they should be specified and solved by targeted legislation, not a blanket prohibition.

In addition, a blanket ban on mandatory arbitration agreements is a far-reaching approach that has been consistently struck down in other states as violating the Federal Arbitration Act ("FAA"). Recent decisions by both the California and United States Supreme Courts have found that state policies which unduly impede arbitration are invalid. Indeed, the U.S. Supreme Court is currently considering two more cases arising out of California courts involving preemption of state arbitration policies under the FAA. Before enacting a law as broad as this, and one that will surely result in years of costly litigation and legal uncertainty, I would prefer to see the outcome of those cases.

For these reasons, I am returning AB 465 without my signature.

Sincerely,

Edmund G. Brown Jr.

AB 561 Campos

I am returning Assembly Bill 561 without my signature.

This bill requires the Agricultural Labor Relation's Board to process all decision orders within one year upon finding an employer liable for benefits due to unfair labor practices. This bill also requires employers who appeal a Board order to post a bond in the amount of the entire economic value of the order.

While I support the overall goal of this bill, I am concerned that the timeline proposed does not provide for unexpected delays or litigation. In most cases the Board is able to expedite final adjudication of monetary awards within 18 months.

As I stated in my veto message on SB 25 last year, I believe what is needed is a balanced approach to resolving issues concerning the fair and effective enforcement of the Agricultural Labor Relations Act. As such, I am directing the Board to examine the current process and make the necessary internal reforms to provide for more timely orders.

Sincerely,

Edmund G. Brown Jr.

AB 578 Low

I am returning Assembly Bill 578 without my signature.

This bill requires employers who apply for variances of existing occupational safety or health standards to formally notice workers, or representatives of workers, who will be impacted.

While this bill is intended to provide an opportunity for affected workers to be notified of variances and raise concerns during a relevant hearing, it is unclear what workers would be affected, and why the current process at the Occupational Safety and Health Standards Board is not sufficient. In fact the board routinely works with stakeholders to provide timely written notice of variance requests and permits those parties to intervene in the proceedings. I believe that process is one that provides adequate opportunity for interested and affected workers to be heard.

Sincerely,

Edmund G. Brown Jr.

AB 676 Calderon

I am returning Assembly Bill 676 without my signature.

This bill would prohibit an employer from discriminating against job applicants based on the applicant's status as unemployed.

This bill is substantially similar to the bill I vetoed last year. Nothing has changed. I still believe that the author's approach does not provide a proper or even effective path to get unemployed people back to work.

Sincerely,

Edmund G. Brown Jr.

AB 883 Low

I am returning Assembly Bill 883 without my signature.

This bill seeks to vest in the Division of Labor Standards Enforcement an entirely new responsibility: to enforce a prohibition on job advertisements and communications that relate to a person's prior status as a public employee.

I think I understand what the sponsors intend, but the provisions in this bill could limit legitimate efforts of public jurisdictions to manage their workforce.

For this reason, I am unable to sign the bill.

Sincerely,

Edmund G. Brown Jr.

AB 1017 Campos

I am returning Assembly Bill 1017 without my signature.

This bill would prohibit an employer from seeking salary information from an applicant for employment.

I agree with the sponsors that we must endeavor to ensure that all workers are paid fairly and do not receive a lower wage because of their gender or any other immutable characteristic that has no bearing on how they will perform in their job. This year, I signed SB 358 that gives California the strongest equal pay law in the nation. This bill, however, broadly prohibits employers from obtaining relevant information with little evidence that this would assure more equitable wages. Let's give SB 358 a chance to work before making further changes.

Sincerely,

Edmund G. Brown Jr.

AB 1354 Dodd

I am returning Assembly Bill 1354 without my signature.

This bill requires an employer with 100 or more employees to submit the details of their nondiscrimination program to the Department of Fair Employment and Housing and to submit periodic reports of its compliance with that program prior to becoming a contractor with the state.

Currently, the department requires all state contractors to develop and implement a nondiscrimination program meeting certain requirements and also certify that they have done so, under penalty of perjury. Furthermore, the department has existing authority to require a contractor to submit this information prior to contracting with the state, if noncompliance is suspected. In light of these factors, I do not believe this bill is necessary at this time.

Sincerely,

Edmund G. Brown Jr.

SB 406 **Jackson**

I am returning Senate Bill 406 without my signature.

This bill expands the circumstances under which a qualified employee may take up to 12 weeks of unpaid leave under the California Family Rights Act.

I support the author's efforts to ensure that eligible workers can take leave to care for a seriously ill family member. The expansion provided in this bill, however, creates a disparity between California's law and the Federal Medical Leave Act and, in certain circumstances, could require employers to provide employees up to 24 weeks of family leave in a 12 month period. I am open to legislation to allow workers to take leave for additional family members that does not create this anomaly.

Sincerely,

Edmund G. Brown Jr.

SB 599 **Mendoza**

I am returning Senate Bill 599 without my signature.

This bill expands a local bid preference requirement to the state for public transit services.

By simply expanding this local requirement to the state, this bill would significantly limit the state's current contracting authority to determine who would be eligible for the bid preference and how to calculate it if applied. I do not believe such a broad change is needed at this time.

Sincerely,

Edmund G. Brown Jr.