



KEY CHANGES TO CALIFORNIA EMPLOYMENT LAW FOR BUSINESSES IN 2020

2020 brings some significant changes for California employers, from the codification of the “ABC test” for independent contractor classifications (AB 5) to bans of certain mandatory employment arbitration agreements entered into after January 1, 2020 (AB 51). Below is an overview of key new employment laws businesses need to understand and be aware of going into 2020.

1. Independent Contractors v. Employees (AB 5)

The ABC test under the 2018 *Dynamex* case has been codified into law, at Labor Code Section 2750.3. Labor Code Section 2750.3 adopts the ABC test in most situations, making it difficult to correctly classify a worker as an independent contractor. Additionally, the new law is retroactive and applies to all wage and hour claims under the Labor Code, as well as unemployment insurance. Starting July 2020, it will also apply to workers' compensation claims. The new statute, however, does carve out many exceptions, which if applicable, allows the old, less stringent, multi-factor balancing test under the *Borello* case to be used. Misclassification suits are being filed by workers alleging that they are wrongfully treated as independent contractors and denied protections afforded to employees. They usually allege that they were improperly paid under California's wage and hour laws, and denied overtime pay, as well as various

other benefits. Businesses should consider their risk, and determine whether they need to convert their independent contractors to employees under the new law.

2. Lactation Accommodation (SB 142)

All companies should update their lactation policy after SB 142, which expands requirements for lactation accommodations, and requires that specific language be newly included in lactation policies. Companies should also consider an entire handbook review/update for older handbooks.

3. Arbitration Agreements (AB 51)

Beginning in 2020, new or modified arbitration agreements may not require workers to arbitrate labor code claims or claims of discrimination/harassment under the Fair Employment and Housing Act (FEHA), unless the agreement is subject to the Federal Arbitration Act and meets certain other requirements. Companies should have an attorney review their arbitration forms to ensure that agreements entered into beginning 2020 will be enforceable.

4. Paid Family Leave (SB 83)

Monetary benefits under Paid Family Leave, a California state program, will be extended from 6 weeks to 8 weeks, beginning on July 1, 2020. San Francisco's supplemental pay ordinance will follow California law and will also extend to 8 weeks. Companies that provide supplemental pay during leaves should review their policies.

5. Statute of Limitations for FEHA Claims (AB 9)

The statute of limitations to file a complaint with the Department of Fair Employment and Housing (DFEH) will be extended from one year to three years. Because employees may then take an additional year to file a civil suit after filing the DFEH charge, a minimum 4-year record retention policy is suggested.

6. Injury Reporting (AB 1805)

The California Occupational Safety and Health Administration (Cal OSHA) reporting obligations have been expanded. The 24-hour hospitalization requirement has been removed. Now, any hospitalization must be reported, excluding those for medical observation or diagnostic testing.

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