

Ah, It's Bill Passing Season in California – and No Employer is Safe!

California Employment Law Update on **June 3, 2019**

It's springtime in California! Even as the swallows return to San Juan Capistrano, the California legislature is busy, busy, busy passing 100s of new laws because, after all, you can never get too much of a good thing!

Yes, it's Bill Passing Season in Sacramento again, and the California legislature seems as determined as ever to defend the state's vaunted position as [“#1 Judicial Hellhole”](#) in the Nation!

Here's the state of play so far – the State Assembly passed six new bills that would further add to a California employer's to-do list:

- **[AB-51](#)** (Gonzalez, D-San Diego) is the legislature's perennial attempt to outlaw arbitration in employment contracts, [as we have reported before](#). Just like its predecessors, this bill is likely preempted by federal law (the Federal Arbitration Act) despite its declared intent not to invalidate agreements that are otherwise enforceable under the FAA. Former Gov. Jerry Brown repeatedly refused to sign similar bills. (We predict that Gov. Newsom may not be quite as punctilious.)
- **[AB-171](#)** (Gonzalez, D-San Diego) provides a “rebuttable presumption” of unlawful retaliation if within 90 days of notice to the employer of sexual harassment, domestic violence, stalking, or sexual assault, the employee suffers an adverse action (e.g., discharge, demotion, suspension, etc.) by the employer.
- **[AB-196](#)** (Gonzalez, D-San Diego) guarantees 100 percent wage replacement (up to the maximum weekly amount available for workers' compensation temporary disability benefits) when workers access California's Paid Family Leave.
- **[AB-500](#)** (Gonzalez, D-San Diego) provides paid leave of six weeks for employees of school districts, charter schools, and community colleges who suffer pregnancy-related disabilities (pregnancy, miscarriage, childbirth, recovery).
- **[AB-1066](#)** (Gonzalez, D-San Diego) makes striking employees eligible to receive unemployment benefits after the first four weeks of a trade dispute – currently, only employees who leave work due to a lockout are eligible for benefits.

- [AB-5](#) (Gonzalez, D-San Diego) codifies the *Dynamex* decision, making it nearly impossible for most employers to classify a worker as an independent contractor. Adopting this new standard could cost California businesses as much as [\\$6.5 billion](#) in additional payroll expenses.

Meanwhile, the State Senate passed some new bills of its own affecting employers:

- [SB-142](#) (Wiener, D-San Francisco) expands upon the existing requirement to provide nursing mothers a private space to express milk. The requirement for lactation accommodation, which was updated in the last legislative session, is further fine-tuned under SB-142, with the requirement that a lactation space contain a surface to place a breast pump and personal items, a place to sit, and access to electricity. An employer also would be required to provide access to a sink with running water and a refrigerator or other cooling device in close proximity to the employee's workspace.
- [SB-171](#) (Jackson, D-Santa Barbara) requires employers with 100 or more employees (which are already required to submit EEO-1 reports to the [EEOC](#)) to submit annual pay data reports to the state Department of Fair Employment and Housing, showing employee compensation and hours worked by gender, race, ethnicity and job category.
- And finally, [SB-37](#) (Skinner, D-Berkeley) would raise the corporate tax rate for businesses in California from 8.84% to a new rate ranging between 10.84% and 14.84% (i.e., an increase of between 23% and 68%). If this latest tax increase passes, California will have achieved the Tax Trifecta: The highest personal income tax rate (13.3%), state sales tax rate (7.25%) and corporate tax rate in the nation. This latest increase in taxes comes amidst a record \$21.5 billion [budget surplus](#) in Sacramento.

These bills now go to the other house of the legislature for review. The full legislature will or won't pass them by September 13 after which time the lucky winners will head to Gov. Gavin Newsom for approval.

[View Original](#)

[Related Professionals](#)

- **Anthony J. Oncidi**
Partner