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New Laws Boost Sick Leave, Undocumented Worker Rights

Grocery-store plastic bags may be disappearing from supermarkets and large pharmacies soon, but homeless people will be able to get state ID cards, and cell phones will have to have “kill switch” software to turn them off if stolen. Those are among the results of 931 new laws taking effect this year signed by Gov. Jerry Brown.

Of greater interest to most businesses and employers are laws that mandate paid sick leave for almost all employees, increase public information about arbitrations and increase job protections for undocumented workers, unpaid interns and people receiving public assistance.

Here are brief descriptions of new laws of interest to businesses and litigants:

LITIGATION

Bad Faith Tactics — AB 2494 re-establishes a court’s power to sanction an attorney or party, through an award of attorneys fees, for filing a frivolous or bad-faith action. Unlike the previous version of the law, which sunsetted in 1995, the sanction power now also applies to answers other initial responsive pleadings.

Civil Appeals — A superior court appellate division may no longer decide an appeal from a limited-jurisdiction civil case with one-word holdings, such as “Affirmed” or “Reversed.” AB 1932 requires the appellate panel give a brief statement of its reasons.

Juror Tweets — A 2011 law allowed a juror who used a cell phone or other electronic device to communicate during a trial to be charged with criminal contempt. AB 2683 eliminates the potential criminal charge (but leaves civil contempt) so that jurors can be questioned about suspected problems without raising concerns about their Fifth Amendment right against self-incrimination.

BUSINESS

Arbitration Transparency — Private arbitration providers must post on their websites extensive data — in a sortable, searchable format — about every consumer matter they arbitrate beginning this year. Aimed at increasing arbitration transparency, AB 802 requires providers to list information about the type of case, the non-consumer party, that party's arbitration record, the attorneys, the award, the case timeline, and more.

Arbitration — Beginning this year, a contract for goods or services cannot require the purchaser to use arbitration and to waive the right to file a lawsuit in the event of a civil-rights violation involving a hate crime or political activity, according to AB 2617. Observers predict the new law will be challenged as being at odd with the Federal Arbitration Act.

Undocumented Drivers — AB 60, adopted in 2013, directs the Department of Motor Vehicles this year to make special California driver's licenses available to people not authorized to be in this country under federal law, that is, the undocumented. The licenses will bear the legend "Federal Limits Apply." A second law, AB 1660, makes it a violation of the state's Fair Employment and Housing Law for an employer to discriminate against someone because the person has an "AB 60" driver's license.

Bad Reviews — Sellers can't include in their sales contracts a clause prohibiting buyers from saying or writing anything about the seller or its products or services, under AB 2365. The legislation is aimed at contracts that prohibit someone from posting bad reviews on online consumer websites, such as Yelp.

Nursing Homes — Residential care facilities for the elderly will need to carry liability insurance against negligence and residents' injuries. Beginning July 1, AB 1523 will require coverage of at least \$1 million per occurrence and \$3 million annual aggregate. Another new law, SB 911, which takes effect in 2016, prohibits the facilities from retaliating against employees for calling 911.

Notaries — Documents witnessed by a notary public, according to SB 1050, now must include a notice that the notary only verifies the identity of the person signing, not the truthfulness, accuracy, or validity of the document.

EMPLOYMENT

Paid Sick Leave — The "Healthy Workplaces, Healthy Families Act," or AB 1522, requires all businesses to allow most employees to take at least three days of paid sick leave a year. The law covers employees who have worked for an employer for at least 30 days during a year, beginning July 1, 2015. They may take sick leave after their 90th day of work.

Contract Labor — Businesses that get employees through a labor contractors or staffing agencies now share legal responsibility and liability along with that contractor for any wage-and-hour violations or failure to provide workers' compensation coverage. AB 1897 also prohibits employers from shifting responsibility for violations of worker safety provisions onto the contractor or agency.

Restaurant Dogs — Restaurants with outdoor dining areas now may allow patrons to bring their dogs along with them to eat in those outdoor areas. AB 1965 says municipalities may adopt local laws to ban the dogs. This law clarifies that state law does not completely prohibit dogs in outside dining areas.

Medi-Cal Bias — Employers may not discriminate against an employee or potential employee who is enrolled in or enrolls in the Medi-Cal program. AB 1792 also prohibits employers from disclosing that an employee is on or seeking Medi-Cal.

Interns — AB 1443 extends to unpaid interns and volunteers the protections from discrimination and harassment that California law gives employees. The law also extends religious-belief protections and accommodations to interns and temporary unpaid workers.

Training on Bullying — Thanks to AB 2053, this year when supervisory personnel go to their biennial mandatory training on spotting and preventing sexual harassment, they will also learn about spotting and preventing bullying or “abusive conduct” or bullying.

Liability Can Stretch Past the Driveway and Out to the Road

Landowners and businesses often can be held liable when customers and visitors are injured on their property. They can not when the injury happens off their property — at least usually.

In a recent decision, a California Court of Appeal allowed the parents of a motorcyclist killed in a traffic accident to sue the restaurant adjacent to the highway where he died. The family claimed the restaurant contributed to the accident by not warning customers — including the one the motorcyclist crashed into — about a dangerous condition on the road just outside its driveway.

The road in this case was Pacific Coast Highway in Malibu. For a stretch beside the restaurant, there were temporary traffic dividers all down the median. They made turning left out of the restaurant’s driveway impossible.

But one night, a patron tried to make a left turn, came to the traffic dividers and then began backing up toward the driveway. At that point, he and the motorcyclist collided.

In their suit, the cyclist’s parents claimed the restaurant “chose profits over public safety” by not having warning signs or more than one parking lot attendant on hand to prevent customers from attempting unsafe turns, the court said in *Annocki v. Peterson Enterprises*.

The trial court ruled that PCH is inherently dangerous and so the restaurant had no duty to warn its departing guests about it. On appeal, the plaintiffs acknowledged that the restaurant had no duty to drivers merely because it was adjacent to the highway. Rather, they claimed the driveway — which went up a hill to the highway, making seeing the dividers difficult — “was so configured that it could confuse motorists into believing they could make a left turn out of the restaurant when in fact they could not.”

The appellate court agreed with the restaurant that generally a landowner has no duty to prevent injuries off its own property. “But there are exceptions to the general principle,” it said.

There may be a duty “if the landowner’s property is maintained in such a manner as to expose persons to an unreasonable risk of injury offsite,” the court said, quoting a 1999 precedent.

In this case, exiting guests had neither signs nor attendants to tell them that they could only turn right onto the highway. Thus, the court held, “the facts here support finding defendant had a duty to warn patrons of the danger in exiting its parking lot as it was on notice of the dangerous conditions of the highway and the risk it posed to patrons leaving the restaurant as well as the danger to persons traveling the highway from a patron exiting the lot in an unsafe manner.”

Ticking off some of the factors used to evaluate duty, the court also noted that “there is moral blame that can be attached to defendant’s failure to take minimal, inexpensive steps” to minimize highway crashes.

“Prominent reflective signage and driveway paint would have done much to avoid the accident here,” it said.

Barry L. Rodolff



The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.

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