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## New Legislative Session Begins

This week the California Legislature began the 2017 portion of the 2017-18 legislative session. Both houses of the Legislature were called to order on Wednesday, January 4<sup>th</sup> and then promptly adjourned Thursday morning for the weekend. Technically, 31 new members joined the ranks of the legislature this week, however, 10 of these members are either transfers from the Assembly to the Senate or had seen prior service in the Legislature.

2017 begins with Democrats firmly in control of California state government. Democrats have a super-majority in both houses of the Legislature and occupy all the state constitutional offices. Predictably, business interests are taking a defensive posture going into this session, apprehensive of the tax, environmental, labor and liability issues that might be on the agenda this session. These interests are pinning their hopes of defending against such bills on the growing number of so-called moderate Democrats that have been elected over the last few elections due to California's "top-two vote getter" primary system intended to encourage the election of more moderate candidates from both parties in districts that are strongly Democrat or Republican-oriented. This session may well be the test of whether this system achieves the intended result.

Leading up to the new session the Governor and legislative leaders seem not to be focused on big legislative issues but rather on preparing to fight Washington and the Trump administration on issues they believe will challenge the California progressive agenda. The big announcement for the week was that California legislative leaders have retained former U.S. Attorney General Eric Holder to lead the state's defense against the expected anti-California Trump administration policies relative to immigration, labor, the environment, and trade.

As is the general rule, action on specific new legislation will not commence in earnest until later in March. The deadline for new bills to be submitted for drafting to Legislative Counsel is January 20 and the deadline to introduce non-urgency bills is February 17<sup>th</sup>. Traditionally, most new bills are introduced in the last week to ten days leading up to the deadline. As a result, these bills are not eligible to be heard in a legislative policy committee until at least the middle of March as bills have to be in print for 30 days prior to being heard in a committee. Senate leadership has already announced committee chairs and appointments of Senators to various committees. In the Assembly, the Speaker has appointed committee

chairs for 2017 but has yet to announce the committee memberships. The make-up of Assembly committee should be resolved in the next couple of weeks.

## What's New for Workers' Compensation in 2017?

Although everything is certainly not perfect when it comes to the workers' compensation system – it never will be – but a few major steps have been made recently. Pure premium rates have been declining, last year the Legislature passed and the Governor signed AB 1160 and AB 1244 with the intent to letting a little air out of any pressure to adjust some of the workers' compensation reforms of 2012, there a couple of regulatory procedures in the works to implement bills passed over the last couple years, and it would seem that there is little interest by the Governor's office or Administration to make any major changes in the workers' compensation system for the remainder of his term in office. That having been said, we still expect to see anywhere from 20 to 25 bills introduced this session of the Legislature, as that seems to be the norm if you look at this area from a historical perspective.

To date, only two Assembly bills relating to workers' compensation, and no Senate bills, have been filed. These are Assembly Bill 44 (Reyes) relating to workplace injuries arising from acts of terrorism or workplace violence, and Assembly Bill 61 (Holden) that currently expresses the intent of the Legislature, "...to enact legislation that would streamline and regulate the workers' compensation system to improve the process for the benefit of small businesses and the employees of the State of California."

The former bill will certainly prompt debate and, hopefully, cause the Legislature to look at such tragedies with an eye to coordinating all the various programs and agencies that are involved in aiding victims of terrorist attacks or other acts of workplace violence. The latter bill, AB 61, is what is known as a "spot" bill – a placeholder that will either be used for some other purpose or will have more substantive provisions added to it.

As to the speculation of what may occur in 2017, it is safe to assume that legislation that was not enacted in 2016 will likely reemerge, at least as an introduction. This includes what will probably be a regular effort to amend or repeal the limits on physical medicine – chiropractic care, physical therapy, and occupational therapy – in favor on placing such services into the medical treatment utilization schedule. In addition, we expect to see the re-introduction of an effort to prohibit apportionment of permanent disability on gender based issues, AB 1643 from last session, a bill that has been vetoed in the last two legislative sessions. Whether other perennial bills that have been vetoed by Governor Brown in the past will be introduced remains to be seen.

It is also likely that there will be an effort to address issues arising from Assembly Bill 2883 (Insurance Committee), legislation that changed the way certain officers and directors of corporations, general partners, and managers of limited liability companies are treated for workers' compensation purposes. This bill is drawing the attention of medical groups, veterinarians, small business groups, small farms and wineries, among others. AB 2883 passed the Legislature last session virtually without any attention or opposition. Issues with the bill began to surface in the fall when it was determined that the bill applied to all in-force policies, not just policies that were new or renewed on January 1, 2017. The prospect of mid-

term premium increases to cover those shareholders, officers, and directors, as well as owners of small businesses that were usually exempt from coverage resulted in complaints to various trade and business groups which in turn caused other legislators to indicate concern about the bill to the Insurance Committee Chair and staff. Numerous issues have been raised from trust issues to what or if a specific percentage of ownership should even be the threshold for eligibility to be exempt from workers' compensation coverage. This bill will likely take some time to work out as nothing could be worse than a clean-up bill that does not address all the outstanding issues.

Worthy of note even at this early stage is Assembly Bill 40 (Santiago), which would significantly upgrade the technology used by providers to access the Controlled Substance Utilization Review and Evaluation System (CURES). Specifically, a "health information technology system" may establish an integration with and submit queries to the CURES database on either a user-initiated basis or an automated basis for purposes of delivering patient data from the CURES database to assist an authorized health care practitioner with evaluating the need for medical or pharmaceutical treatment or providing medical or pharmaceutical treatment to a patient for whom a health care practitioner is providing or has provided care. The bill has expected protections for patient privacy and other requirements and appears to be an effort to improve the functionality of the system from a provider perspective.

What makes AB 40 an interesting bill is that it is an urgency measure, which means that should it pass the Legislature it would become effective immediately upon signature by Governor Brown. Since an urgency measure requires a two-thirds vote of both houses of the Legislature, it is reasonable to assume this is an issue that has been at least initially vetted both with the Department of Justice and the medical community. It is also important to clarify that the adoption of this technology will not unnecessarily delay the operative date of the mandated access of CURES in Senate Bill 482 (Lara) signed into law earlier this year.

Lastly, in every legislative session there are a handful of bills introduced seeking to extend presumptions of covered claims to police, firefighters, nurses, or other public entities or increase the duration of full time pay for injured public safety officers in lieu of workers' compensation benefits.

## Governor Brown Formally Submits Nomination for Becerra for AG

Following the resignation of California Attorney General Kamala D. Harris, Governor Edmund G. Brown Jr. officially submitted U.S. Congressman Xavier Becerra's (D-CA) nomination for California Attorney General to the State Legislature Tuesday.

As you will recall, on December 1, 2016, Congressman Xavier Becerra was appointed by Governor Jerry Brown to serve as interim-Attorney General, replacing Kamala Harris, who was elected to the Senate in November. The next election for the California's Attorney General is scheduled for 2018. The California Constitution, which establishes the Office of Attorney General, mandates that the Governor, in the event of a vacancy of a statewide elected office, nominate a person to serve the balance of the unexpired term. This

nominated person must then be confirmed by a majority of the membership of both the California Senate and Assembly.

The official submission of the nomination starts a 90-day clock for the approval of the nomination by both houses of the Legislature.

In December, California State Assembly Speaker Anthony Rendon appointed Assembly Member Reginald Jones-Sawyer (D-South Los Angeles), current Chair of the Assembly Committee on Public Safety and Assembly Member Mark Stone (D-Santa Cruz), current Chair of the Assembly Committee on Judiciary, to Co-Chair the Special Committee on the Office of the Attorney General for the 2017-2018 Session. He also named the members of the committee, which are as follows: Assembly Member David Chiu, Assembly Member Jordan Cunningham, Assembly Member Susan Eggman, Assembly Member James Gallagher, Assembly Member Tom Lackey, Assembly Member Eloise Reyes, and Assembly Member Shirley Webber.

The Assembly Special Committee on the Office of the Attorney General has announced its first meeting on January 10, 2017. The Senate has yet to make an announcement regarding the appointment of its committee. It is expected that once the Senate has their committee, each house committee will meet and make a recommendation to the floor on the confirmation, which will then be followed by a floor vote of each house.

This confirmation will be both historic and significant for the future of California, as the state Legislature has never jointly confirmed an Attorney General due to a vacancy in office, making this an unprecedented event. Second, if confirmed, Becerra will be the first Latino Attorney General in our state's history.

"Xavier has been an outstanding public servant – in the State Legislature, the U.S. Congress and as a deputy attorney general," said Governor Brown when he named Rep. Becerra as his nominee last month. "I'm confident he will be a champion for all Californians and help our state aggressively combat climate change."

Rep. Becerra, 58, of Los Angeles, has served in the U.S. House of Representatives since 1992, most recently as the first Latino member of the Committee on Ways And Means, ranking member of the Ways and Means Subcommittee on Social Security and chairman of the House Democratic Caucus. The congressman is a member of the Congressional Hispanic Caucus, which he chaired from 1997 to 1998, and the Executive Committee of the Congressional Asian Pacific American Caucus. In 2010, Rep. Becerra served on the National Commission on Fiscal Responsibility and Reform.

Prior to his election to Congress, Rep. Becerra served in the California State Assembly as representative for the 59th Assembly District in Los Angeles County from 1990 to 1992. He served as a deputy attorney general in the California Department of Justice, Office of the Attorney General from 1987 to 1990. The congressman began his legal career in 1984, advocating for and representing individuals with mental illness.

## New Laws for Motorists

The beginning of 2017 has brought with it several new laws for drivers in California. These laws went into effect on January 1<sup>st</sup>, and cover a wide spectrum of actions such as phone usage, safety devices, and vehicle recalls. The new laws are as follows:

**Use of Electronic Wireless Devices (AB 1785, Quirk):** Driving a motor vehicle while holding and operating a handheld wireless telephone or a wireless electronic communications device will be prohibited, unless the device is mounted on a vehicle's windshield or is mounted/affixed to a vehicle's dashboard or center console in a manner that does not hinder the driver's view of the road. The driver's hand may only be used to activate or deactivate a feature or function on the device with the motion of a single swipe or tap of the driver's finger, but not while holding it. The law does not apply to manufacturer-installed systems that are embedded in a vehicle.

**Child Safety Seats (AB 53, Garcia):** This law requires a parent, legal guardian, or the driver of a motor vehicle to properly secure a child who is younger than 2 years of age in an appropriate rear-facing child passenger restraint system, unless the child weighs 40 or more pounds or is 40 or more inches in height (3 feet, 3 inches).

**Motorcycle Lane Splitting (AB 51, Quirk):** This law defines "lane splitting" as driving a two-wheeled motorcycle between rows of stopped or moving vehicles in the same lane. The law authorizes the California Highway Patrol (CHP) to develop educational guidelines relating to lane splitting in a manner that would ensure the safety of motorcyclists, drivers, and passengers. In developing these guidelines, the law requires the CHP to consult with specified agencies and organizations that have an interest in road safety and motorcyclist behavior.

**Vehicle Registration Fee (SB 838, Committee on Budget and Fiscal Review):** This law increases the vehicle registration fee on every vehicle or trailer coach from \$43 to \$53 beginning April 1, 2017.

**Environmental License Plate (SB 839, Committee on Budget and Fiscal Review):** This law increases the fee for the issuance of Environmental License Plates from \$43 to \$53, starting July 1, 2017. This law also increases the fee for the renewal, retention, transfer, or duplication of Environmental License Plates (personalized) from \$38 to \$43, starting January 1, 2017.

**Accident Reporting (SB 491, Committee on Transportation and Housing):** This law increases the minimum financial threshold for property damage that is required to be reported to the DMV from \$750 to \$1,000 when a driver is involved in a motor vehicle collision.

**Vehicle Safety Recalls (AB 287, Gordon):** This law enacts the Consumer Automotive Recall Safety (CARS) Act, and requires the DMV to include a general advisory regarding vehicle recalls and needed repairs on each vehicle registration renewal notice. This law prohibits a dealer or a rental car company from renting or loaning a vehicle with a manufacturer's recall no later than 48 hours after receiving the notice—until the vehicle has

been repaired. This law gives a limited exception for a licensed dealer or a rental car company with a fleet of 34 or fewer loaner or rental vehicles. The law authorizes the DMV to suspend or revoke a vehicle dealer's license if they violate the CARS Act.

**Year of Manufacture License Plates (SB 1429, Nielsen):** This law expands the Year of Manufacture (YOM) license plate program to include vehicles and license plates manufactured through 1980. This law benefits owners of vintage motor vehicles who obtain license plates from the year corresponding to the vehicle's model-year, and wish to use those vintage plates in lieu of regular license plates. Such plates are commonly found from different sources, including relatives, garage sales, estate sales, etc. The program will include the blue and yellow license plates issued for use on California motor vehicles from 1970 until 1980.

**Background Checks of Drivers of Transportation Network Companies (AB 1289, Cooper):** A transportation network company (TNC) will be required to perform a comprehensive background check of all their drivers. This law also specifies penalties for a TNC that violates or fails to comply with this requirement. A TNC will be prohibited from contracting with, employing, or retaining a driver if they are registered on the U.S. Department of Justice National Sex Offender public website, has been convicted of specified felonies, or within the previous seven years, has been convicted of a misdemeanor assault or battery, domestic violence, or driving under the influence of alcohol or drugs. Any TNC in violation of the specified requirements is subject to a penalty of not less than \$1,000 or more than \$5,000 for each offense.

**Installing Counterfeit or Nonfunctional Air Bags (AB 2387, Mullin):** This law prohibits knowingly and intentionally manufacturing, importing, installing, reinstalling, distributing, or selling any device intended to replace an air bag system in any motor vehicle if the device is a counterfeit or nonfunctional air bag system, or does not meet federal safety requirements. The law also prohibits selling, installing, or reinstalling any device that would cause a vehicle's diagnostic system to fail to warn when the vehicle is equipped with a counterfeit, nonfunctional, or a case in which no air bag was installed. This violation is a misdemeanor punishable by a \$5,000 fine and/or up to a one year in county jail.

## New Laws Impacting Business

Along with the many other new laws going into effect with the new year, the California Chamber of Commerce has released a list of the laws that will begin affecting California businesses in 2017. The list of new laws and their summaries, as put together by the Chamber, is as follows:

### **Minimum Wage**

**SB 3** will increase the minimum wage over the next several years to \$15 an hour. For January 1, 2017, businesses with 26 or more employees must pay a minimum wage of \$10.50 per hour.

The minimum wage increase will require all employers to post a new Minimum Wage Order (MW-2017). The upcoming minimum wage increase also will have an effect on other pay practices, such as the overtime rate.

### **Agricultural Overtime**

[AB 1066](#) will phase in increased overtime requirements for agricultural employees over the course of four years beginning January 1, 2019. Currently, agricultural employees are exempt from certain wage requirements.

### **Itemized Wage Statements**

[AB 2535](#) amends Labor Code Section 226 and clarifies that employees who are exempt from the payment of minimum wage and overtime are not required to have their hours tracked and logged on an itemized wage statement, commonly referred to as a pay stub.

### **Payroll**

[AB 1847](#) requires employers who must notify employees of their eligibility for the federal Earned Income Tax Credit to also notify these employees that they may be eligible for the California Earned Income Tax Credit. The bill updates the required notice that must be given to employees.

### **Challenges to Minimum Wage Violations**

[Under AB 2899](#), employers who contest a Labor Commissioner ruling that they failed to pay the minimum wage must post a bond equal to the unpaid wages, excluding penalties.

### **Local Wage Enforcement**

[SB 1342](#) grants local officials or department heads the power to issue subpoenas and to report noncompliance with employment-related ordinances, such as local minimum wage ordinances, to superior court judges. The legislative intent of this new law further encourages cities and counties to enact measures to combat wage theft.

### **Janitorial Workers**

[AB 1978](#) enacts new recordkeeping, registration and training requirements for the janitorial industry.

### **Overtime for Private Elementary or Secondary School Teachers**

[Under AB 2230](#), private school employees will need to meet a new minimum earnings test that will look at the comparable salaries offered to public school teachers in the school district or county, rather than the state minimum wage. This legislation is effective July 1, 2017.

## Licensure Requirements for Hair Salons/Nail Salons

[AB 2437](#) requires any establishment that is licensed by the Board of Barbering and Cosmetology (BBC) (e.g., hair salons, nail salons, estheticians, etc.) to post a notice regarding workplace rights and wage-and-hour laws by July 1, 2017. The Labor Commissioner must create the model notice. Failure to post the notice will result in a fine.

## Domestic Workers

[SB 1015](#) extends the Domestic Worker Bill of Rights, which was to be repealed on January 1, 2017.

## Temporary Services; Wages

Under the Labor Code, employees of a temporary service employer must be paid weekly, regardless of when the assignment ends. [AB 1311](#) applies the weekly pay requirement to security guards employed by private patrol operators who are temporary services employers. This urgency legislation took effect on July 25, 2016.

## Fair Pay

Last year, significant amendments were made to California's equal pay laws to address gender wage inequality. This year, two new bills expand California's Fair Pay Act.

- [SB 1063](#) prohibits an employer from paying any of its employees wage rates that are less than the rates paid to employees of another race or ethnicity for substantially similar work.
- [AB 1676](#) specifies that, under the Fair Pay Act, prior salary cannot, by itself, justify any disparity in compensation.

## Harassment Prevention Training

[AB 1661](#) requires local agency officials, including local elected officials, to receive sexual harassment prevention training and education whenever those officials receive any type of compensation, salary or stipend.

## All-Gender Restrooms

[AB 1732](#) sets a new requirement that, beginning March 1, 2017, all single-user toilet facilities in any business establishment, place of public accommodation or government agency must be identified as "all-gender" toilet facilities.

## Immigration-Related Protections

Employers are required by federal law to verify an employee's eligibility to work using the Form I-9 process. Under federal law, it is unlawful for employers to ask for more or different documentation than is required by the Form I-9, refuse to accept documents that appear

genuine on their face or engage in other types of document abuse. [SB 1001](#) makes this type of conduct unlawful under state law as well.

### **Definition of Employee**

[AB 488](#) revises the definition of employee under California's Fair Employment and Housing Act (FEHA) to authorize an individual employed under a special license in a nonprofit sheltered workshop, day program or rehabilitation facility to bring an action under the FEHA for any form of prohibited harassment or discrimination.

### **Human Trafficking**

[AB 1684](#) authorizes the DFEH to receive, investigate and prosecute complaints from victims of human trafficking. The DFEH can bring civil actions on behalf of these victims.

### **State Contracts and Anti-Discrimination Certification**

[AB 2844](#) requires those who bid, propose or renew a contract of \$100,000 or more with a state agency to certify their compliance with the Unruh Civil Rights Act and FEHA.

### **Discrimination Regulations and Enforcement**

[SB 1442](#) consolidates various anti-discrimination regulations and enforcement and investigatory powers under the jurisdiction of the DFEH. It removes other state agencies' authority to issue regulations prohibiting discrimination.

### **Paid Family Leave Benefits**

Effective January 1, 2018, [AB 908](#) increases the amount of paid family leave (PFL) benefits an employee can receive from 55 percent of earnings to either 60 percent or 70 percent of earnings, depending on the employee's income.

### **Domestic Violence, Sexual Assault and Stalking Protections**

[AB 2337](#) requires employers with 25 or more employees to provide employees with written notice about the rights of victims of domestic violence, sexual assault and stalking to take protected time off for medical treatment or legal proceedings.

A required form must be given to all new employees when hired and to current employees upon request. The Labor Commissioner is required to develop the form on or before July 1, 2017.

Employers are not required to comply with this notice requirement until the Labor Commissioner posts the new form on its website.

### **Private Retirement Savings Plans**

[SB 1234](#) approves the California Secure Choice Retirement Savings Program (SCRSP), which is a state-run retirement plan for private-sector workers. Specific prerequisites must be met before the SCRSP can be implemented, and it may be some time before we actually see this program up and running.

#### **Paid Sick Leave**

[SB 3](#) extends California's paid sick leave law to cover in-home supportive services workers beginning July 1, 2018.

[AB 2393](#) provides specific rules relating to the interaction of sick leave and parental leave for school district employees working in positions requiring certification qualifications.

#### **Disability Benefits**

[AB 2886](#) extends the appeal time for disability benefits from 20 to 30 days, effective March 1, 2018.

#### **Juvenile Criminal History Information**

[AB 1843](#) prohibits employers from inquiring into an applicant's juvenile convictions or using such convictions as a factor in determining any condition of employment.

#### **Criminal Background Check — Ride Sharing Services**

[AB 1289](#) requires a "transportation network company" (think Uber and Lyft) to conduct local and national criminal background checks for each participating driver and prohibits the use of drivers with certain types of convictions.

#### **Indoor Heat Illness**

[SB 1167](#) requires Cal/OSHA to propose a heat-illness and injury prevention standard for indoor workers by January 1, 2019.

#### **Driving**

[AB 1785](#) reaffirms the general ban on using wireless electronic devices while driving, but amends existing law to authorize drivers to use their hand to activate or deactivate a feature or function of the device with a single swipe or tap, as long as the device is mounted so as not to hinder the driver's view of the road.

#### **Smoking**

A package of bills was signed earlier this year that extend the ban on workplace smoking. These rules took effect June 9, 2016.

#### **Public Works and Prevailing Wages**

A number of new laws relate to public works and prevailing wages.

Employers who provide services or construction work on public works projects for the government or public-sector entities must pay the prevailing wage, which is usually significantly higher than the minimum wage.

The bills include:

- [AB 326](#) — requires the release of funds held pending a prevailing wage determination;
- [AB 1926](#) — relates to the payment of apprentices for pre-employment activities, such as testing or training; and
- [SB 954](#) — limits the ability for a nonunion contractor to receive a credit for certain payments made against the prevailing wage.