

## New State Laws for 2020

01.08.20 | Linda J. Rosenthal, JD



With the holiday festivities in the rearview mirror, we now highlight two California laws that became effective on January 1, 2020:

- New data security and privacy requirements (CCPA)
- Upward adjustments to the minimum wage laws (and other employment-related provisions)

Although both are California statutes, they reflect *and* influence significant nationwide trends.

### ***California Consumer Protection Act Law***

Those annoying pop-ups demanding that we accept cookies are now everywhere on the internet. That's thanks in large part to the European Union's General Data Protection Regulations (GDPR) in effect since May 2018 and now California's law on data privacy and security, the California Consumer Protection Act (CCPA).

The CCPA was also enacted in 2018 when Jerry Brown was still governor, but the effective date was delayed until January 1, 2020. The law sprang "from a deal in 2018 among legislators, privacy advocates and industry groups that wanted to head off a more sweeping proposal" that had already qualified to be a ballot initiative in an upcoming election.

Like the GDPR that has become significant beyond the European Union, California's new data privacy law is now the model American law that other states are, or likely will be, copying. And while both are directed primarily to large business entities, certain nonprofits may be affected. In any event, cyber security is an issue that all entities that deal in data of any kind should take seriously.

You can't say we haven't warned you about this important trend. First up was [\*The EU Data-Privacy Law That May Affect U.S. Nonprofits \(GDPR\)\*](#) (March 7, 2018). We posted an update in January 2019: [\*More About GDPR and Nonprofits\*](#). Then came [\*Move Over, GDPR: Here Comes CA's New Data Privacy Law\*](#) (July 18, 2019).

The compromise in California that resulted in the CCPA eighteen months ago “has not ended the fight over consumer privacy in California.” In 2019, “tech companies and other industries unsuccessfully lobbied ... for measures to fix what they said were serious flaws in the law before it took effect and supporters are already pushing another initiative to expand its safeguards and boost penalties for violations.”

So AB 325, the California Consumer Protection Act, is in effect and the Attorney General has promised aggressive enforcement of this new data law. But the statute as currently written may not be the final word. Stay tuned.

#### ***Minimum Wage and Other Employer Laws***

California is just one of many states around the nation with laws on the books that gradually raise the minimum wage over a number of years – with the most recent changes effective January 1, 2020. In certain local areas, there are higher rates. According to the National Employment Law Project, the minimum wage will go up in 72 jurisdictions – (some 24 states and 48 cities and counties) – around the nation at the beginning of this year. Later in 2020, there will be four more states and 23 more cities and counties added to these totals.

In California, current minimum wage information is at Minimum Wage Order (MW-2019). “Although there are some exceptions, almost all employees in California must be paid the minimum wage as required by state law. Effective January 1, 2017, the minimum wage for all industries will be increased yearly. From January 1, 2017, to January 1, 2022, the minimum wage will increase for employers employing 26 or more employees. This increase will be delayed one year for employers employing 25 or fewer employees, from January 1, 2018, to January 1, 2023.”

As of January 1, 2020, the rate is \$13 for companies with at least 26 employees and \$12 for smaller employers. Some California cities are permitted to, and will, have different rates. Several cities have recently adopted ordinances which establish a higher minimum wage rate for employees working within their local jurisdiction. “The effect of this multiple coverage by different government sources is that when there are conflicting requirements in the laws, the employer must follow the stricter standard; that is, the one that is the most beneficial to the employee.” The federal rate continues to be much lower than California’s so it doesn’t come into play at all here.

Nonprofits, like other employers, must generally comply with these new minimum-wage rates. There are a few exceptions: for “certain learners, regardless of age,” and for “employees who are mentally or physically disabled, or both, and for nonprofit organizations such as sheltered workshops or rehabilitation facilities that employ disabled workers. Such individuals and organizations may be issued a special license by the Division of Labor Standards Enforcement authorizing employment at a wage less than the legal minimum wage. Labor Code Sections 1191” et seq.

There are also exceptions if a business or organization hires “shepherders.” Seriously.

Another heads-up related to wages: Beginning January 1, 2020, all employers nationwide must also take into account the new federal overtime regulations. We’ve covered that long and controversial saga regularly since 2016. The matter has recently been settled; see Overtime Regulations: Final ... at Last! (October 8, 2019). These rules have “changed the formula that employers – for-profit and nonprofit alike – use to determine which employees are eligible for overtime pay for putting in more

than a set number of hours in a day or week.”

As of January 1st, the federal eligibility cut-off number is about \$35,568 a year for a full-time employee. We’ve cautioned before, though, that the federal eligibility rate does not preclude individual states from having higher cut-off figures. In California, the state salary threshold has been \$41,600, but it’s set to go considerably higher over the next few years much like the minimum-wage law has predetermined increases built into the original legislation. Other states have followed this trend.

**Conclusion**

Nonprofit organizations are rightfully focused on compliance with federal laws related to the all-important tax-exempt status. Too often, though, they don’t pay enough attention to the broader rules that affect *all* employers. But ignoring these rules can have consequences as dire as failure to stay in good standing with the Internal Revenue Service.

In a separate post next week, we’ll discuss California’s new “gig” law that may affect certain nonprofit employers. Simply put, the “gig” nickname of the new law, California AB 5, refers to the most confusing and controversial part of the new rules for determining whether workers are employees or independent contractors.