

Employment Law

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New California Employment Laws in 2012

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Now that the new year is upon us, it is important for employers to be aware of the numerous new California laws in the employment area that will impact their operations. Unless otherwise noted, the laws listed below are effective as of January 1, 2012.

Credit Checks

Under California Civil Code Section 1785.20.5 and Chapter 3.6 of the Labor Code, employers and prospective employers are now prohibited from obtaining or using consumer credit reports about applicants or employees for employment purposes. There are certain limited statutory exceptions for managerial positions and other specifically enumerated positions, including certain law enforcement positions, positions that involve regular access to bank, credit card, social security and other private information, positions that involve access to \$10,000 or more in cash, positions in which the employee would have financial authority or be a signatory of the employer, and positions that involve access to certain confidential or proprietary information.

Wage Theft Prevention Act – Notice to Employees Regarding Pay

Labor Code Section 2810.5 now requires employers to provide written notice to an employee at the time of hire of details regarding the employee's pay. The new law requires the Labor Commissioner to prepare a model notice form for employers to use. [Click here](#) for this new form, which can also be found on the website of the Division of Labor Standards Enforcement.

Willful Misclassification of Independent Contractors

This new law provides substantial new penalties of between \$5,000 to \$25,000 for the "willful misclassification" of employees as independent contractors. For a detailed discussion of this law, please click [here](#) for our October 12, 2011, newsletter on the topic.

Written Commission Agreement

This new law does not go into effect until January 1, 2013, giving employers a full year to get into compliance. At that time, Labor Code Section 2751 will require employers who have commission pay arrangements with employees to put the arrangements in a written contract. The contract must include the method of computation and payment of commissions. In an interesting twist, the law provides that even if the contract term expires, if the employee continues working, then the contract is presumed to remain in effect until it is superseded by a new contract or the employment is terminated.

Interference with Leave Rights

Sections 12945 and 12945.2 of the Government Code, which are part of the California Family Rights Act ("CFRA") and Pregnancy Disability

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Leave (“PDL”) law, have been amended to make it an unlawful employment practice to interfere with, restrain, or deny the attempt to exercise any right provided under these laws. This amendment makes the statutory language of California’s leave laws consistent with the federal Family and Medical Leave Act (“FMLA”).

Pregnancy Disability Leave

The PDL allows eligible employees to take up to four months of leave in a 12-month period due to pregnancy disability. The law has been amended to provide such employees with benefits at the same level and under the same conditions as if the employee had continued working during the leave period. Prior law only required employers to provide benefits to the same extent they did so for other temporary disability leaves, which usually meant a 12-week limit on benefits because that is what is required under the FMLA.

Genetic Discrimination and Gender Expression

The California Fair Employment and Housing Act (“FEHA”) has been amended to expressly prohibit discriminating against employees on the basis of genetic information, which includes information about the genetic tests of an individual or family member, or the manifestation of a disease or disorder in family members of the individual. This prohibition is in addition to the existing law, which prohibits discrimination on the basis of a medical condition, which includes genetic characteristics.

The FEHA has also been amended to clearly define “gender” to include both gender identity and gender expression, making discrimination on either basis prohibited. Gender expression is defined as “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth,” which is consistent with prior law. In Government Code Section 12949, the law also expressly requires employer dress codes to permit employees to dress consistently with both their gender identity and gender expression.

Organ and Bone Marrow Donor Leave

The new law clarifies that the amount of paid leave in a one-year period that is currently permitted under Labor Code Sections 1508 through 1513 for organ and bone marrow donation – 30 days and 5 days, respectively – are business days, not calendar days, and the one-year period is measured from the date the leave begins. The new law also clarifies that employers can require employees to use paid time off, in addition to vacation or sick time, for such leave.

Insurance Non-Discrimination Act

California law has long required health care service and insurance plans to provide group coverage to registered domestic partners of an employee or insured to the same extent coverage is provided to spouses. By broadening the law’s application to any group service or insurance plan that is marketed, issued or delivered to a California resident, the new law is designed to ensure that multistate employers cannot discriminate against same-sex couples. Thus, employers whose primary operations and employees are outside of California must ensure that any plan offered to any employee who is a California resident offers equal coverage to registered domestic partners and spouses. The new provisions are contained in Sections 1374.58 and

1367.30 of the Health and Safety Code, and Sections 10112.5 and 10121.7 of the Insurance Code.

Liquidated Damages in Administrative Proceedings

In addition to the right to recover liquidated damages for minimum wage violations in civil court, employees now have the right to recover such damages in administrative actions before the Labor Commissioner.

E-Verify

California state agencies and local governments can no longer mandate that employers use E-Verify, unless required by federal law as a condition of receiving federal funds.

Miscellaneous New Laws

There are several new laws that relate only to certain industries, such as a new requirement for wage notices for farm labor contractors and a safe lifting requirement for hospitals. There are also several cost and process-related changes to workers' compensation, and new procedural regulations that were implemented by the Department of Fair Employment and Housing. Other new laws relate only to government employers or public contractors, including an increase in the penalty amounts for prevailing wage violations.

Recommendations

Employers are encouraged to review their employment policies and procedures and ensure that their practices are up to date. It is advisable to consult with counsel to make certain that any policy or procedural changes are consistent with the new laws.

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