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California Employment Laws Taking Effect In 2012

October 2011

California is at it again! Over the past few weeks Governor Jerry Brown signed several employment-related bills – some of which require employers of all sizes to update their policies and practices. Some of the new laws, most of which will become effective January 1, 2012, are briefly summarized in this alert.

AB 887

Amends the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act to include gender identity and gender expression in the definition of “Gender,” making it clear that discrimination on the basis of gender identity and gender expression is prohibited. Requires employers to allow an employee to appear or dress consistently with the employee’s gender expression. Defines “gender expression” as a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

SB 559

Amends the FEHA and the Unruh Civil Rights Act to prohibit discrimination on the basis of genetic information. Genetic information is defined to mean information about genetic tests of an individual, genetic tests of an individual’s family members, or the manifestation of a disease or disorder in family members of an individual. Genetic information is defined to include any request for or receipt of genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of an individual. Genetic information does not include information about the sex or age of an individual.



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AB 22

Adds Labor Code section 1024.5 to limit when employers or prospective employers can use a credit report for employment purposes. In effect, it limits the use of credit reports to employees in managerial positions, positions that involve access to sensitive consumer information on a regular basis, positions involving fiduciary responsibilities (*i.e.*, regular access to an employer's funds totaling \$10,000 or more and the ability to transfer funds to enter into contracts on behalf of the employer), and positions with access to confidential or proprietary information.

Amends Civil Code section 1785.20.5 to require the written notice provided to prospective employees prior to requesting a credit report for employment purposes to identify the specific basis under Labor Code section 1024.5(a) for use of the report.

SB 459

Adds Section 226.8 to the Labor Code to prohibit willful misclassification of individuals as independent contractors and to prohibit charging an individual who has been willfully misclassified as an independent contractor a fee or making any deductions from compensation that would be unlawful if the individual was properly classified (*i.e.*, deductions for materials, repairs, etc.). Provides for civil penalties of not less than \$5,000 and not more than \$15,000 for each violation, in addition to any other penalties or fines permitted by law. This fine increases if the Labor & Workforce Development Agency (LWDA) or a court determines the employer has engaged in a pattern or practice of these violations to not less than \$10,000 and not more than \$25,000 for each violation. Also requires public notification of violations.



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Adds Section 2753 to the Labor Code to provide that any person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor. This section does not apply to attorneys providing legal advice in the course of the practice of law or a person who provides advice to his or her employer.

AB 592 and SB 299

Amends Government Code section 12945 to make it an unlawful employment practice for an employer to refuse to maintain and pay for coverage under a group health plan for an eligible female employee who takes pregnancy disability leave for the duration of the leave, up to four months. The employer can recover the premium from the employee if: (1) the employee fails to return from leave after four months *and* (2) the failure to return from leave is for a reason other than (a) the taking of a California Family Rights Act (CFRA) leave or (b) the continuation, recurrence or onset of a health condition that entitles the employee to pregnancy disability leave or “other circumstance beyond the control of the employee.”

These bills also make it an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under Section 12945.

Amends Government Code section 12945.2 to make it an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under CFRA.



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AB 1396

Amends Labor Code section 2751 to require all contracts for employment involving commissions as a method of payment to be in writing and to set forth the method by which the commissions are required to be computed and paid.

AB 240 and AB 469

Amends and adds a number of Labor Code sections.

Amends Section 98 to allow employees to recover liquidated damages pursuant to a complaint brought before the Labor Commissioner alleging payment of less than the minimum wage. Also amends to require parties who have received notice of a claim before the Labor Commissioner to notify the Labor Commissioner in writing of any change in the parties' business or personal address within 10 days of the change occurring.

Amends Sections 240 and 243 enlarges period of time in which the Labor Commissioner may require employer who fails to pay or appeal from judgment or conviction of certain Labor Code violations to post bond in an amount determined by the Labor Commissioner.

Amends Section 1174 to increase the record-keeping requirement to three years (from two years) and to specify that an employer cannot prohibit an employee from maintaining a personal record of hours worked or piece-rate units earned.

Amends Section 1194.2 to allow for the recovery of liquidated damages in an amount equal to twice the unpaid wages plus interest in any action under Section 98, 1193.6 or 1194. Also amends to give the Labor Commissioner discretion to



refuse to award liquidated damages if the employer demonstrates it acted in good faith.

Amends Section 1197.1 to specify that the penalties available under the section are in addition to amounts sufficient to recover unpaid wages and that wages recovered pursuant to Section 1197.1 shall be paid to the affected employee. Also amends to specify the Labor Commissioner can assess civil penalties *and* amounts due for wages in a hearing under this section.

Adds Section 1194.3 to allow for the recovery of attorney's fees and costs incurred to enforce a court judgment for unpaid wages under the Code.

Adds Section 1197.2 to specify that it is a misdemeanor for an employer who has the ability to pay and willfully fails to pay a final court judgment or final order issued by the Labor Commissioner for all wages due to an employee who has been discharged or who has quit within 90 days of the date the judgment was entered or the order becomes final. Also provides for monetary penalties of \$1,000 to \$20,000 and imprisonment of up to one year depending upon the amount of the judgment.

Adds Section 2810.5 to the Labor Code to require employers to provide each employee at the time of hiring written notice "in the language the employer normally uses to communicate employment-related information to the employee" containing:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.



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- The regular payday designated by the employer in accordance with the requirements of this code.
- The name of the employer, including any “doing business as” names used by the employer.
- The physical address of the employer’s main office or principal place of business, and a mailing address, if different.
- The telephone number of the employer.
- The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.
- The Labor Commissioner is expected to develop a template for this new-hire notification.

This Labor Code section also requires employers to notify employees *in writing* of any changes to the above information within seven calendar days after the time of the changes, unless (1) the changes are reflected on a timely wage statement, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

If you have any questions on the content of this alert, please contact [Michelle La Mar](#), [Jon Daryanani](#), or [Erin Smith](#) of Loeb & Loeb’s Los Angeles office.

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