

New Wave of California Employment Laws Requires Prompt Action

October 28, 2011

A new tidal wave of employment laws is about to flood the shores of California. On January 1, 2012, multiple new laws will take effect in California, and they will have a significant impact on the employment practices of companies with California operations. California employers will need to take prompt action to ensure compliance, including revising employment policies and practices such as hiring and compensation practices, employee handbooks, posters, leave of absence administration, and healthcare coverage. A reference chart describing the changes is provided below.

Morgan Lewis will host a webinar, “New California Employment Laws for 2012: What Employers Need to Know,” to discuss these new laws in more detail on November 17, 2011 at 12:30 p.m. ET. To register for the webinar, please visit <https://morganlewisevents1.webex.com/mw0306ld/mywebex/default.do?siteurl=morganlewisevents1&rnd=0.3440498026280779>.

Also watch for upcoming LawFlashes that will analyze some of the more significant laws in more detail and recommend employer action.

Bill	Topic	Description
<i>Wage and hour and compensation</i>		
SB 459	Penalties for willful misclassification of independent contractors	Imposes civil penalties, ranging from \$5,000 to \$25,000, against any employer that willfully misclassifies workers as independent contractors. The new law also prohibits charging fees or making deductions from the compensation of misclassified workers when the fees or deductions would have been prohibited if the worker had been classified as an employee. Violators also must post a notice stating that they have violated the law. See Morgan Lewis’s October 11, 2011 LawFlash analyzing this new law (available at http://www.morganlewis.com/pubs/LEPG_LF_%20New CaliforniaLawPrescribesStiffPenaltiesForEmployers_11oct11.pdf).
AB 1396	Commission plan must be in writing and must be signed by employee	Requires all commission plans with California employees to be in writing. Employers must provide employees with a signed copy of the commission contract and must obtain a signed confirmation of receipt. If the commission contract expires and the parties continue to work under its terms, a presumption applies that those terms remain in effect until a new plan supersedes the old plan. Compliance is required by January 1, 2013.
AB 469	Wage Theft Prevention Act: Requires written disclosures of basic job terms relating to pay	Amends the California Labor Code to require employers to provide a written disclosure of specified basic job terms to nonexempt employees, including the rate of pay, the regular payday, and the address and phone number of the employer. The employer also must provide prompt notice of changes.

Bill	Topic	Description
<i>Pre-employment</i>		
AB 22	Restricts use of consumer credit reports in employment decisions	Bans most employers from obtaining credit information about applicants or employees, except in limited circumstances. There are several exceptions. For example, the law does not apply to managers, to employees with access to confidential information, or to employees who have access to significant sums of money. The law also amends provisions of the California's Consumer Credit Reporting Agencies Act (CCRAA) relating to the requirement that employers give written notice to employees about requests for and the use of such information.
AB 1236	State cannot mandate use of E-Verify	Forbids California government entities from requiring private business owners to use the E-Verify Internet-based system to determine the eligibility of their employees to work in the United States. The law also reaffirms that, for most private employers, E-Verify is a purely optional program.
<i>Leaves of absence</i>		
AB 592	Prohibits interference with protected family/medical leave	Clarifies that it is unlawful to interfere with an employee's entitlement to protected leave under the California Family Rights Act. Previously, the law had explicitly prohibited only the refusal to allow an employee to take leave.
<i>Benefits</i>		
SB 299	Requires health insurance coverage for PDL	Requires employers to extend health plan coverage to employees taking pregnancy disability leave (PDL) for the entire four months of PDL. Employers currently must allow employees disabled by pregnancy to take a leave for up to four months and must provide reasonable accommodations. The new law requires employers to maintain and pay for health coverage for employees who take a pregnancy-related disability leave under the same conditions of coverage that would have been provided if the employee had continued her employment continuously for the duration of the leave. Under the new law, it's possible for an employer to seek reimbursement from the employee for premiums it paid for maintaining coverage if the employee does not return from leave.
SB 757	Requires health insurance coverage for domestic partners (of same or different sex)	Prohibits healthcare service plans and health insurance policies from discriminating in coverage between spouses or domestic partners of a different sex and spouses or domestic partners of the same sex. This requirement expands on the existing law, which required healthcare service plans and policies only to provide group coverage to an employee's registered domestic partner that is equal to the coverage it provides to an employee's spouse. The new law clarifies that registered domestic partners of the same sex cannot be treated differently than registered domestic partners of a different sex.
<i>Discrimination</i>		
AB 887	Prohibits employment discrimination based on "gender identity" and "gender expression"	Adds language to several antidiscrimination statutes, including the Fair Employment and Housing Act (FEHA), to "clarify" the definition of "sex." Previously, FEHA's list of protected traits included "sex" and its definition section defined "sex" to include "gender." Now, the protected traits delineated in FEHA will include not only "sex," but also "gender," "gender identity," and "gender expression." "Gender identity" is defined to mean a person's deeply internal sense of being male or female. "Gender expression" means a person's gender-related appearance and behavior, irrespective of whether that appearance and behavior is stereotypically associated with the person's assigned sex at birth. The law specifically requires an employer to "allow an employee to appear or dress

Bill	Topic	Description
		consistently with the employee's gender expression."
SB 559	Prohibits discrimination based on genetic information	Amends FEHA to add genetic information to the list of protected traits. "Genetic information" is defined to mean the individual employee's genetic tests, the genetic tests of the employee's family members, and the "manifestation of a disease or disorder" in the employee's family members. Discrimination in hiring or employment based on any of these characteristics now is unlawful.

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