

New California Employment Laws

A number of important employment-related laws came into effect at the start of the new year. We have organized them by topic and provide summaries of the key aspects of each. The effective date of each is January 1, 2013, unless otherwise indicated.

General Application Employment Statutes

Social Media Access Limitations (AB 1844). “Social media” is broadly defined in the statute to include a wide variety of electronic content, including emails and text messages. Employers are prohibited from requiring or requesting that employees or applicants: (i) disclose usernames or passwords to access personal social media; (ii) access personal social media in the presence of an employer or an employer representative; or (iii) produce any social media postings. However, employers are permitted to require current employees to reveal their passwords and usernames if needed to investigate misconduct or legal violations.

Inspection and Copying of Personnel Records (AB 2674). Alters current law by requiring employers to maintain personnel records for at least three years after an employee’s termination and clarifies that both current and former employees have a right to inspect and receive copies of their records. Also sets a new 30-day time limit for compliance with a request, unless there is a pending lawsuit relating to a personnel matter, with a new penalty of \$750 for not providing records within the 30-day time limit.

An aggrieved employee may also be entitled to costs and attorneys’ fees, as well as injunctive relief.

Criminal History Information Requirements (AB 2343). Agencies, organizations and individuals that receive criminal history information from the California Department of Justice are now required to provide notice to an employee or applicant who is the subject of an adverse employment, licensing or certification decision based on that information.

Changes to Workers’ Compensation (SB 863). Increases permanent disability benefits by approximately 30 percent, phased in over a two-year period, and changes the benefit delivery system to reduce inefficiencies and loopholes. In addition, independent medical review (IMR) is mandatory when there are disputes about medical treatment, and the Workers’ Compensation Appeals Board is not permitted to make a determination of medical necessity that contradicts the determination of the IMR organization. Parts of the legislation will become effective January 1, 2013, while other parts require further administrative or regulatory action first.

Wage and Hour Statutes

New Requirements for Employees’ Paid Commissions (AB 1396). All employers that pay “commissions” to employees working in California will be required to supply their employees with written contracts setting forth the formula for determining the commission as

well as the method of payment. Employers must also keep a signed receipt of the contract for each employee. Under California's Labor Code Private Attorneys General Act, employers that violate the law may be fined \$100 per employee per pay period for the first violation and \$200 per employee per pay period for subsequent violations.

Overtime for Nonexempt Employees

(AB 2103). A non-exempt employee's fixed salary only covers the employee's non-overtime hours, regardless of any agreement to the contrary. This new statute is designed to address situations where non-exempt employees are told that their salaries already include overtime.

Penalties for Failure to Provide Itemized

Wage Statements (SB 1255). Effective July 1, 2013, an employee is "injured" and entitled to a statutorily specified penalty when an employer does not supply a complete and accurate wage statement. An employee need not show actual injury, but can establish injury by demonstrating that any of the nine categories of wage information was not included. The new law further specifies that a "knowing and intentional failure" does not include an isolated and unintentional error due to a clerical or inadvertent mistake. Penalties are \$50 for the first violation and \$100 for each subsequent pay period in which the law is violated, up to \$4,000, plus costs and attorneys' fees.

Wage Garnishment Changes (AB 1775).

Effective July 1, 2013, the amount of an employee's wages exempt from garnishment is increased to the lesser of 25 percent of the individual's weekly disposable earnings or the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage (currently \$8 per hour). Disposable earnings are defined as the portion of an individual's earnings that remains after deducting all amounts required to be withheld by law.

San Jose Sets City Minimum Wage. Effective in the first quarter of 2013, employers who maintain a facility in San Jose or who possess a business license from the city must pay employees working in San Jose at least \$10 per hour.

Discrimination Statutes

Restructuring in the Department of Fair Employment and Housing (DFEH) (SB 1038).

Eliminates the Fair Employment and Housing Commission and creates a new Fair Employment and Housing Council within the California Department of Fair Employment and Housing. The new council will have seven appointed members who will promulgate regulations under the Fair Employment and Housing Act (FEHA). Also under the new law, there is no administrative adjudication of FEHA claims. DFEH can file cases directly in court (but prior to bringing a civil action DFEH will require all parties to the case to undergo free mandatory dispute resolution), and DFEH will be entitled to recover reasonable attorneys' fees and costs when successful.

Prohibition of Discrimination Based on Religious Dress and Grooming (AB 1964).

FEHA now explicitly protects employees' religious dress and grooming practices as covered religious beliefs and observances. Religious dress includes the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts and any other item that is part of religious observance; religious grooming includes all forms of head, facial or body hair related to a religious observance or creed. The law further provides that an accommodation that segregates an employee from the public or from other employees is not a reasonable accommodation.

Breastfeeding Now Covered under the Fair Employment and Housing Act (FEHA) (AB 2386).

FEHA's definition of discrimination based on "sex" is expanded to include "breastfeeding and conditions related to breastfeeding."

New Pregnancy-Related Regulations. New forms must be posted and given to employees affected by pregnancy. In addition, the new regulations clarify the term “four months” of leave, defining it as the number of days the employee would normally work during four calendar months (i.e., four months equal 17-1/3 weeks).

Employment-Related Statutes

The Shriver R-Word Act (AB 2370, SB 1381).

The Shriver R-Word Act revises the language in a number of statutes to replace “mentally retarded” with “intellectually disabled” and “mental retardation” with “intellectual disability.” However, these wording changes do not affect the coverage, eligibility, rights, responsibilities or substantive definitions in those statutes and, thus, do not change an employer’s statutory obligations or rights.

Slavery and Human Trafficking Notices Requirements (SB 1193).

Under this law, by April 1, 2013, a notice that contains information related to slavery and human trafficking will have to be posted by certain employers in an area easily visible to employees and the public.

Disability Access Litigation Protections (SB 1186). This law limits frivolous litigation premised on technical violations regarding disability access. It does so by reducing statutory damages, adding provisions to prevent “stacking” of multiple claims and imposing a ban on letters making monetary demands prior to litigation.

California False Claims Act (AB 2492). This law expands existing law by redefining the term “obligation,” increasing the civil penalty for each violation and providing specified relief to any employee, contractor or agent who is discharged, demoted, suspended or in any other manner discriminated or retaliated against for reporting a false claim. The law also modifies the statute of limitations for certain civil actions.

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