

New California Employment-Related Laws for 2012*

Governor Jerry Brown signed a plethora of employment-related bills in 2011, many of which took effect on January 1, 2012. Some of the more significant new laws are summarized below.

Wage & Hour and Compensation

Penalties for Willful Misclassification of Independent Contractors (SB 459)

This new law makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. It also prohibits employers from charging fees or making any deductions from compensation for any purpose, including goods, materials, space rental, services, licenses, repairs, maintenance, and fines, when such fees or deductions would have been impermissible had the individual not been misclassified.

The law imposes civil penalties between \$5,000 and \$25,000 per violation (in addition to any other penalties permitted by law) and requires employers to publicize findings of violations of the new law on their organization's websites (or if the employer does not have a website, in an area accessible to all employees and the general public).

The legislation is reflected in newly added Labor Code sections 226.8 and 2753.

The Wage Theft Prevention Act of 2011 (AB 469)

This Act requires employers to provide all new nonexempt hires with written notice of specific wage information (that is specifically described in the Act). It also increases the penalties for nonpayment of all wages due, including overtime premiums and minimum wage for all hours worked. The Act also mandates that the Labor Commissioner prepare a template of the written notice, which the Division of Labor Standards and Enforcement (DLSE) issued on December 28. A copy of the template is available online.

Employees must be notified of any changes to the information provided in the initial notice within seven calendar days after these changes are made.

The Act requires that employers keep a copy of **both** an employee's wage statement and a record of deductions, rather than just one or the other, for at least three years. The Act also amends Labor Code § 1174, requiring employers to keep payroll records for each employee for at least three years, instead of two years as previously required.

Pre-Employment Issues

Restriction of Consumer Credit Reports in Employment Decisions (AB 22)

This law bans most employers from obtaining credit information about applicants or employees, except in limited circumstances. The law does not apply to managers (i.e., an employee covered by the executive exemption set forth in Wage Order 4 of the Industrial Welfare Commission (8 Cal. Code Regs. 11040)), 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 as well as the source of the information.

The law does not prohibit criminal background checks or verification of prior employment and /or references.

State Cannot Mandate Use of E-Verify (AB 1236)

This law ensures that, except as required by federal law or as a condition of receiving federal funds, city, county and state government cannot mandate the use of E-Verify on private business owners, and reaffirms that E-Verify is an optional/voluntary program for most private employers.

Leaves of Absence

Interference with Protected Family/Medical Leave is Prohibited (AB 592)

This law amends the California Fair Employment and Housing Act (FEHA) to clarify that it is unlawful to interfere with an employee's entitlement to protected leave under the California Family Rights Act (CFRA). Previously, the law had explicitly prohibited only the refusal to allow an employee to take leave.

Discrimination Based on Genetic Information is Prohibited (SB 559)

This law amends FEHA and the Unruh Civil Rights Act to add discrimination on the basis of 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 "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.

Employee Benefits

Health Insurance Coverage for Pregnancy Disability Leave is Required (SB 299)

This law amends FEHA to require employers to maintain and pay for health coverage under a group health plan 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 (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."

Health Insurance Coverage is Required for Domestic Partners (Of Same Or Different Sex) (SB 757)

This law 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.

Discrimination

Prohibits Employment Discrimination Based on "Gender Identity" and "Gender Expression" (AB 887)

This law amends several antidiscrimination statutes, including FEHA, to "clarify" that the definition of "sex" includes 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 consistently with the employee’s gender expression.” [Employers can still require an employee to adhere to reasonable workplace dress/grooming standards.]

Prohibits Discrimination Based on Genetic Information (SB 559)

This law 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.

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