

2013 Labor Law Update

LEGISLATIVE AND REGULATORY CHANGES AND IMPORTANT COURT DECISIONS during this last year made significant changes for employers. Beginning with State Laws, a summary of some of the most important ones you need to know to prepare for this year.

RELIGION AND REASONABLE ACCOMMODATION

AB 1964 clarifies that FEHA's discrimination protections and reasonable accommodation requirements cover religious dress practices and religious grooming practices. It also specifies that segregating an individual from other employees or the public is not a reasonable accommodation of religious beliefs or observances.

SEX DISCRIMINATION AND BREASTFEEDING

AB 2386 changes the definition of "sex" under FEHA for purposes of discrimination protections to include breastfeeding and related medical conditions. There is a mandatory update to the Discrimination and Harassment Notice. CalChamber offers an all-in-one California and Federal Employment Notices Poster which contains this updated notice.

SOCIAL MEDIA AND PERSONAL PASSWORDS

AB 1844 prohibits employers from requiring or requesting employees or job applicants to provide user names or passwords for personal social media accounts and from requesting an employee or applicant to divulge personal social media. There are limited exceptions, including an exception relating to employer investigations.

EXPLICIT MUTUAL WAGE AGREEMENTS – SALARIES FOR NON-EXEMPT EMPLOYEES

AB 2103 amends section 515 of the Labor Code to state that payment of a fixed salary to a nonexempt employee will be deemed to be payment only for the employee's regular nonovertime hours, notwithstanding any private agreement or "explicit mutual wage agreement" to the contrary.

BRINKER V. SUPERIOR COURT

Employers are required to provide employees the opportunity to take meal breaks;

They need not "ensure" meal breaks are taken;

Class treatment in wage cases not appropriate where liability cannot be determined through common policy or common proof.

INSPECTION OF PERSONNEL RECORDS

AB 2674 amends Labor Code section 1198.5, relating to inspection and retention of personnel records. The new law makes several significant changes, including in the following areas: (1) who has

the right to inspect or request copies of personnel files; (2) any deadlines for providing access to files; (3) where and how records must be made available; (4) an employer's obligations to retain files; and (5) penalties for failure to comply.

If an employee asks for an employer-provided form to make the inspection request, the employer must provide the employee with such a form. By January 1, 2013, HRCalifornia members will have access to a form created for this purpose.

MISCLASSIFICATION OF INDEPENDENT CONTRACTORS

SB 459 New penalties established (between \$5,000 to \$25,000) for the "willful misclassification" of independent contractors.

Creates significant penalties for hiring companies in California who "willfully" misclassify workers as independent contractors. Prohibits willful misclassification of individuals as independent contractors.

The bill also prohibits charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation where those acts would have violated the law if the individuals had not been mischaracterized.

PENALTIES FOR WAGE STATEMENT VIOLATIONS

SB 1255 amends Labor Code section 226 to specifically define an "injury" for purposes of violating the itemized wage statement statute. Employers are required to provide specified information to employees on a wage statement each time wages are paid.

An employee who "suffers an injury" as a result of an employer knowingly or intentionally failing to comply with the statute is entitled to recover damages against the employer.

Section 226 requires employers to provide accurate itemized wage statements to employees showing specified information, including, among other things

1. the name of the employee,
2. an employee identification number or the last four digits of the social security number,
3. the gross wages earned,
4. all deductions,
5. net wages earned,
6. the total hours worked,
7. the applicable hourly rates and the corresponding number of hours worked at each rate,
8. the number of piece rate units earned and the

applicable piece rates,

9. the inclusive dates of the period for which the employee is paid,

10. and the name and address of the legal entity that is the employer.

WAGE GARNISHMENT - Effective July 1, 2013.

AB 1775 increases the amount of wages that are exempt from garnishment. The new law increases the amount of a worker's paycheck that is exempted from garnishment to \$320 a week.

STATE MANDATED RETIREMENT PLAN (SB1234)

Employers with 5 or more employees are required to have a retirement plan for their employees. If there is no "company sponsored plan" then companies must contribute a percentage of an employee's wages to "state run plan"

- Details and implementation being worked out
- Scheduled to go into effect January 2013

ITEMIZED WAGE STATEMENTS/TEMPORARY SERVICE EMPLOYERS

AB 1744 is effective July 1, 2013. It amends Labor Code section 226 relating to itemized wage statement and wage notice requirements and requires specified information from temporary service employers.

PREGNANCY DISABILITY LEAVES:

Employers are required to maintain group health benefits under the same terms as if the employee was actively reporting to work for up to 4 months, and that this requirement is in addition to any additional obligation to maintain health benefits during an additionally approved FMLA/CFRA leave of up to 12 weeks.

COMMISSION AGREEMENTS

AB 1396 California employers must use written commission agreements that set forth the method by which commissions are computed and paid.

AB 2675 amends the written commission agreement law (which takes effect on January 1, 2013) to exempt certain types of wage payments from the written agreement requirement.

AFFORDABLE CARE ACT'S "EMPLOYER MANDATE"

Employers should prepare for the new requirements of the Patient Protection and Affordable Care Act's

“employer mandate.” which imposes certain requirements on employers to provide health care insurance to employees.

Beginning in 2013, employers will be required to report the value of group health plan benefits on employees’ annual W-2 forms. The new information is required for the 2012 tax year. Additionally, employees will be allowed to allocate a maximum of \$2,500 annually for their Flexible Spending Accounts (“FSA”). The Act also eliminates reimbursement to the employer of health care expenses through the Medicare Part D subsidy program. The statute will also increase the amount of Medicare tax withheld from employees making more than \$200,000 annually (or \$250,000 for married couples filing jointly).

Beginning in 2014, employers with 50 or more full-time employees must offer a minimum level of health insurance to employees, after a 90-day waiting period. Employees are considered “full-time” if they work at least 30 hours in a workweek. Employers that do not offer health insurance to its employees are subject to a penalty of \$2,000 per employee for every employee above 30 workers.

WAREHOUSE WORKERS

AB 1855 adds warehouse workers to the list of specified contractors subject to sufficient funds requirements.

Specifically, existing law prohibits a person or entity from entering into an agreement for labor or services from specified contractors (construction, farm labor, garment, janitorial or security guard) where the person or entity knows, or should have known, that the contract or agreement does not include funds sufficient to comply with applicable laws or regulations. AB 1855 adds warehouse workers to this list.

CALIFORNIA FOLLOWS FEDERAL LAW ON TIME

CLOCK ROUNDING (*See's Candy Shops v. Superior Court*)
Fourth District Court of Appeal, Division One (San Diego)

Key Issue: whether employers in California lawfully may round their employees' time clock entries to the nearest tenth of an hour for purposes of calculating the employees' work hours.

- Court did not set a hard and fast rule that it is always lawful to have automatic rounding, but it clearly held that California has adopted the federal standard which generally permits such time clock rounding, as long as the rounding is mechanically to the nearest increment.

ACCESSIBILITY REFORM

Disability Access: Liability (SB 1186) :
Provides businesses some relief from lawsuits based on violations of the California equivalents of the federal Americans with Disabilities Act, The ADA allows only injunctive relief while California law provides \$4,000 as a statutory penalty per

occurrence of a violation.

Will reduce a defendant's minimum liability for statutory damages under the Unruh and Disabled Persons Acts from \$4,000 to \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 60 days of being served with the complaint and the area is new construction since 2008 that was inspected and approved by the local building department or was CASp-inspected.

HUMAN TRAFFICKING POSTING

SB 1193 requires specified businesses to post an 8.5” x 11” notice, on or before April 1, 2013, that contains information about organizations that provide services to eliminate slavery and human trafficking.

The Department of Justice will develop a model notice that complies with the requirements of SB 1193 and make the model notice available. This notice will also be made available on HRCalifornia after the Department of Justice has created it.

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PREVAILING WAGE DIR to Publicly List All Prevailing Wage Laws (SB 1370):

California law requires that workers employed on a public work, as defined, be paid not less than the general “prevailing rate” of per diem wages, as specified.

- This bill responded to criticisms that there is no single location where employers can identify all projects subject to state-mandated prevailing wage requirements.
- Department of Industrial Relations (DIR) required to post on its website a list of every California code section and the language of those sections that relate to the prevailing wage rate requirements for workers employed on a public work projects.
- The DIR would be required to post this information on its website on or before June 1, 2013, and to update that list each Feb. 1

FARM LABOR CONTRACTORS

AB 1675 changes the penalties for failing to license farm labor contractors.

Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than six

months, or both.

This new law would, in addition, subject a person who violates the licensing requirement to citations issued by the Labor Commissioner and civil penalties that increase as the number of citations for violations increase.

IRS MILEAGE REIMBURSEMENT RATE:

Beginning January 1, 2013, the recommended IRS reimbursement rate for business miles driven is 56.5 cents per mile.

PHYSICIANS-SURGEONS OVERTIME EXEMPTION RATE:

Effective January 1, 2013, the hourly rate is \$72.70

COMPUTER PROFESSIONAL OVERTIME EXEMPT RATE:

Effective January 1, 2013 the hourly rate is \$39.90, the minimum monthly salary is \$6927.75 and the annual salary is \$83,132.93

SAN FRANCISCO RAISES MINIMUM WAGE

San Francisco will have the highest minimum wage in the nation starting Jan. 1, 2013, when employee paychecks increase by a whopping 31 cents to \$10.55 per hour.

SAN JOSE SET CITY MINIMUM WAGE

San Jose voters on Tuesday agreed to increase the city’s hourly minimum wage to \$10 — \$2 above the statewide floor, siding with proponents of the measure who said it was necessary in order for low-income workers to survive in an increasingly pricey tech-based economy.

9TH CIRCUIT FEDERAL COURT RULING

ADA does not protect individuals who claim discrimination because of medical marijuana use because marijuana is illegal under federal law; **James v. City of Costa Mesa** Same holding as California Supreme Court in *Ross v. Ragingwire* (applying FEHA)

FEDERAL CREDIT REPORTING ACT (“FCRA”) NOTICES

Effective January 1, 2013, employers and consumer reporting agencies must use the updated “FCRA Summary of Rights,” “Notice to Users of Consumer Reports of their Obligations under the FCRA” and “Notice to Furnishers of Information of their Obligations under the FCRA” forms for their background check programs.



Courtesy Pacific Employers