

2015 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 notice of some of the most important ones you need to know to prepare for this year.

STATE LAW CHANGES

(AB 326) REPORTING SERIOUS INJURIES VIA E-MAIL

California law requires employers to report serious injuries to Cal-OSHA immediately via telephone or telegraph. AB 326 updates the law to replace “telegraph” with “e-mail” as a method to report serious injuries.

(AB 1443) FEHA PROTECTIONS FOR INTERNS

Provides that the protections against discrimination and harassment set forth in the California Fair Housing and Employment Act (FEHA) are also applicable to any person in an unpaid internship, or other limited duration program to provide unpaid work experience to a person.

(AB 1522) 3 DAY PAID SICK LEAVE

The “Healthy Workplaces, Healthy Families Act of 2014” will go into effect on July 1, 2015. Now California employees who work more than 30 days in a year will be eligible to accrue one hour of sick leave for every 30 hours worked.

The paid sick leave accrual will apply to full time, part-time, and temporary employees. The accrual of sick leave will begin on July 31, 2015 for persons employed as of July 1, 2015 and after 30 days for persons who are hired after July 1, 2015.

Employers can require that employees cannot actually use any accrued sick leave until they have been employed for at least 90 days and may cap the use of sick leave at 24 hours or 3 days per year.

(AB 1660) DISCRIMINATION AGAINST UNDOCUMENTED WORKERS DRIVER'S LICENSE

DMV can issue driver's licenses to undocumented workers. Under AB 1660, businesses may not discriminate against persons with the special driver's license unless possessing a driver's license is required by law or is required by the employer and the employer's requirement is otherwise permitted by law.

The change in the law does not limit or expand an employer's authority to require a person to possess a driver's license.

(AB 1634) CAL-OSHA PENALTIES AND ABATEMENT

Prohibits Cal/OSHA from granting, for Serious violations, a proposed modification to civil penalties for abatement or credit for abatement unless the employer

has done any of the following:

- Abated the violation at the time of the initial inspection;
- Abated the violation at the time of a subsequent inspection prior to the issuance of a citation;
- Submitted a signed statement under penalty of perjury and supporting evidence, when necessary to prove abatement, in accordance with subdivision (b) of Section 6320.

(AB 1710) DATA BREACH NOTICE REQUIREMENTS

This modifies existing law by making requirements that had previously applied only to large employers to now be applicable to virtually every employer and also adds required remedies in the event of a disclosure of “personal information.” “Personal Information” includes the individual's first name or first initial and last name, together information such as the individual's social security number, medical information, financial account information or driver's license number. The law now applies to businesses that “maintain” such information.

Businesses must implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the Personal Information from unauthorized access, destruction, use, modification, or disclosure.

Also, “if a person or business providing the notification was the source of the breach, an offer to provide appropriate identity theft prevention and mitigation services, if any, shall be provided at no cost to the affected person.

(AB 1723) EXPANDED PENALTIES FOR WILLFUL FAILURE TO PAY WAGES

Under existing law, an employee who files a lawsuit or a claim with the Labor Commissioner may seek section 203 waiting penalties if the employee can prove that the employer willfully failed to pay all wages due at the time the employee was discharged or quit.

Under the new law, a DLSE investigator who believes unpaid wages are owed can include in his/her citation waiting time penalties if the investigator finds that the employer willfully failed to pay wages.

(AB 1897) HIRING COMPANIES WILL SHARE LIABILITY WITH CONTRACTORS

Creates new Labor Code section 2810.3 which makes “client employers” subject to liability for the failure of its contractors to pay wages to the contractor's employees or to obtain workers' compensation insurance coverage.

A client employer must have 25 or more workers to be subject to the new law. The law also prohibits the client employer from shifting workplace safety obligations to the contractor. However, the employer can include indemnification language in its agreement with the contractor.

NOTE: “Labor Contractors” does not include nonprofit, community-based organizations.

(AB 2074) SEXUAL HARASSMENT TRAINING TO INCLUDE WORKPLACE BULLYING

Workplace Bullying or “abusive conduct” is conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests.

The law does not further specify the content of the training on prevention of abusive conduct, nor does it mandate that any specific amount of time be allotted to this topic within the 2-hour sexual harassment training.

(AB 2074) LIQUIDATED DAMAGES FOR MINIMUM WAGE VIOLATIONS

An employee who alleges state minimum wage violations may recover liquidated damages in an amount equal to the wages unlawfully unpaid with interest at any time before the expiration of the statute of limitations on the underlying wage claims. But not Overtime claims.

If the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages.

(AB 2288) CHILD LABOR PROTECTION ACT OF 2014

This law establishes enhanced penalties if a minor is discriminated against in the terms and conditions of his/her employment because the minor filed a claim or civil action alleging a violation of the Labor Code that arose while the person was a minor. The individual can recover treble damages.

The statute of limitations is tolled until the minor reaches 18 years of age. Civil penalties may also be assessed between \$25,000 and \$50,000 for each violation.

(AB 2536) VOLUNTEER CATEGORIES EXPANDED

An employer is prohibited from discharging or in any manner discriminating against Emergency Rescue Personnel such as volunteer firefighters, reserve peace officers, or emergency rescue personnel.

The definition now includes an officer, employee, or member of a political subdivision of the state, or of a sheriff's department, police department, or a private fire department, as well as an officer, employee, or member of a disaster medical response entity sponsored or requested by the state.

The law requires an employee who is a health care provider to notify his or her employer at the time the employee becomes designated as emergency rescue personnel and when the employee is notified that he or she will be deployed as a result of that designation.

(SB 1087) LICENSING OF FARM LABOR CONTRACTORS

SB 1087 bill prohibits a license to operate as a farm labor contractor from being granted to a person who, within the preceding 3 years, has been found by a court or an administrative agency to have committed sexual harassment of an employee, or employed any supervisory employee who committed sexual harassment of an employee.

(SB 1360) RECOVERY PERIODS ARE HOURS WORKED

Employees may request recovery periods when working outdoors in temperatures exceeding 85 degrees. Employers must provide and encourage employees to take cool down periods of no less than 5 minutes when they feel the need to do so to avoid overheating. The recovery periods are duty free. SB 1360 adds an additional clarification that the recovery periods are considered "hours worked" and no deductions from wages can occur as a result of taking the recovery periods.

MINIMUM WAGE

California's current minimum wage of \$9 per hour will rise to \$10 per hour effective January 1, 2016.

REMEMBER -- The increase will directly impact non-exempt minimum wage hourly workers. However, it also affects lower-salaried exempt employees and other groups of non-exempt employees. Review compensation plans to ensure they continue to comply with laws impacted by the minimum wage.

The key areas are:

- Exempt Employees
- Inside Salesperson - Commission Exemption
- Tools or Equipment
- Calculation of Split Shift Premiums
- Collective Bargaining Agreements
- Voluntary Crediting Agreements

IRS MILEAGE REIMBURSEMENT RATE:

Beginning January 1, 2015, the recommended IRS reimbursement rate for business miles driven is 57.5 cents per mile.

PHYSICIANS-SURGEONS OVERTIME EXEMPT RATE:

Effective January 1, 2015, the hourly rate is \$75.19

COMPUTER PROFESSIONAL O/T EXEMPT RATE:

Effective January 1, 2015 the hourly rate is \$41.27, the minimum monthly salary is \$7165.12 and the annual salary is \$85,981.40

Labor Agency Changes

NATIONAL LABOR RELATIONS BOARD:

Quickie Election Rules – All steps leading up to a representation election through the NLRB are speeded up.

NLRB - MCDONALD IS JOINT EMPLOYER WITH FRANCHISEES:

The National Labor Relations Board is issuing unfair labor practice complaints in 43 cases against McDonald's franchisees and their franchisor, McDonald's USA, LLC.

The widely reported complaints hold McDonald's as a "joint employer" that is responsible for the workers at its franchised locations, and has been widely viewed as a victory for unions looking to hold the McDonald's corporation liable for labor practices at individual locations.

THE AFFORDABLE CARE ACT (ACA)

Beginning in 2015, employers with 100 or more full-time employees must offer a minimum level of health insurance to employees, after a 90-day waiting period.

Beginning in 2016, 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.

EQUAL EMPLOYMENT OPP. COMMISSION (EEOC):

Issued new guidance regarding religious clothing and grooming practices in the workplace.

The guidelines focused on employers' obligations under Title VII which prohibits discrimination in the workplace based on religion and protects all aspects of religious observance, practice, and belief.

The EEOC defines religion very broadly to include not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Buddhism, and Sikhism, but

also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or may seem illogical or unreasonable to others.

DOL ISSUES NEW COBRA NOTICE:

The U.S. Department of Labor issued a new model COBRA notice that informs individuals who are eligible for COBRA benefits that they can, as an alternative to selecting the Company's plan, buy health insurance on the exchange.

GOOD PRACTICES

- **Use the New I-9 Form** —
- **Teach the New GHS Haz Com.**
- **Pay Details Form** — Requires employers to provide non-exempt employees, at the time of hire or whenever there is a change to their rate of pay.
- **Take Sex Harassment Rules Seriously** — Major court decisions and new laws have created substantially greater complexity to sex harassment rules, it is not to be messed with.
- **Review "Salary-exempt" Positions** — Overtime penalties are substantial for misclassified personnel.
- **No "Explicit Wage Agreements" for non-exempt employees.**
- **Employee Clock Outs For Meal Periods** — Even with the Brinker Case decision, it is still important to protect yourself with proof of meal periods in 5 hours.
- **Do Not Use On-duty Meal Agreements** — Do not allow employees to work at meal times.
- **Consider Everyone's Protected Class Employee** — Everyone is a victim, begin from that premise.
- **Learn The "Interactive Process"** — Always get more information on how you can accommodate.
- **Bring Handbooks Up To Date** — The laws change, your policies need to change with the law.
- **Create/Review Sales Commission Contracts** — You're the author, poor language will be construed against you.
- **Pregnancy Disability Leave** — Employers with 5 or more employees must continue to maintain and pay for health coverage, if they have a group health plan, for eligible female employees who take Pregnancy Disability Leave (PDL) up to a maximum of four months in a 12-month period.



Courtesy Pacific Employers

2015 Labor Law Update Landscape.wpd