NEW EMPLOYMENT LAWS AND REQUIREMENTS FOR 2012

Each January, California rings in the New Year with new employment laws that go into effect. The following is a partial list that will affect employers' day-to-day operations.

AB 469 – Notices to Newly Hired Employees. Current law requires employers to prominently post certain wage and hour information. AB 469 requires employers to provide a notice to each newly hired employee stating (1) the rate or rates of the employee's pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances claimed as part of the minimum wage, such as meal or lodging allowances; (3) the employer's regular payday; (4) the employer's name and any "doing business as" names; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the employer's telephone number; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary. To date, the Labor Commissioner has not indicated that additional information on the notices will be required, but an approved notice from the Labor Commissioner is expected before January 1.

SB 459 – Willful Misclassification of Independent Contractors. SB 459 creates new civil penalties of $5,000 to $25,000 for "willful misclassification" of independent contractors by employers, defined as "avoiding employee status for an individual by voluntarily or knowingly misclassifying the individual as an independent contractor," and prohibits charging fees or making deductions from compensation paid to misclassified workers. SB 459 also imposes a new "Scarlet Letter" enforcement mechanism by requiring employers or persons who misclassify workers as independent contractors to prominently post a notice on the employer's web site (or if it does not have a web site, in an area that is accessible to all employees and the general public) that (1) the employer has been found to have engaged in a serious violation of the law by engaging in the willful misclassification of employees; (2) it has changed its practices; (3) any employee who believes they have been misclassified can complain to the Labor and Workforce Development Agency; and (4) the notice is posted pursuant to state order. Employers should confirm that any independent contractors are properly classified and have in place processes for classifying and monitoring independent contractor status.

AB 22 – Restricted Use of Credit Reports. AB 22 restricts investigation of prospective employees by prohibiting most employers from obtaining an employee's or prospective employee's consumer credit report. Limited exceptions exist for certain employers or where the applicant's credit history relates to the job position, but these exceptions are narrow and the burden will be on employers to identify which exception warrants the use of a credit check. Employers should evaluate their background check practices in light of the new restrictions.

SB 299 – Health Care Coverage for Pregnancy Disability Leave. Employers with five or more employees must continue to maintain and pay for health coverage under group health plans for eligible female employees who take Pregnancy Disability Leave. Existing law only required employers to maintain coverage to the same extent and for the same length of time as they would for other temporary disability leaves. Employers should ensure their human resource and benefits administration personnel are properly enforcing the new requirements and continue to give careful attention to coordination of Pregnancy Disability Leave with family leave laws.

AB 887 – Discrimination Based on Gender Identity and Expression. AB 887 amends the Fair Employment and Housing Act (FEHA) to specifically prohibit discrimination based on "gender identity" and "gender expression," defined as "a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." Thus, an employee must be allowed to dress or appear in accordance with the employee's personal gender identity or expression. Employers should amend their discrimination policies as necessary.

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Los Angeles
2049 Century Park East, 28th Floor
Los Angeles, CA 90067
P (310) 284-2200
F (310) 284-2100

Orange County
19800 MacArthur Blvd., Suite 500
Irvine, CA 92612
P (949) 260-4600
F (949) 260-4699

San Francisco
555 California Street, 10th Floor
San Francisco, CA 94104
P (415) 262-5100
F (415) 262-5199

AB 1396 – Written Commission Agreements. AB 1396 requires that all commission payment arrangement with employees be contained in a written commission agreement provided to the employee and that the employer shall obtain a signed receipt from the employee. Because AB 1396 is not effective until January 1, 2013, employers have a year to bring their commission pay arrangements into compliance. Careful attention should be given to drafting these pay arrangements, particularly commission plans applicable to multiple employees.

NLRB Notice. The National Labor Relations Board has issued a Final Rule requiring most employers to post a notice regarding employees' rights under the National Labor Relations Act. The notice must be posted conspicuously where other government notices are posted, and if an employer provides access to company rules or policies via a company internet or intranet site, the NLRB notice must be posted on the site as well. Employers must post the notice beginning January 31, 2012 and can obtain a copy of the notice from the NLRB web site.

As a final note, on November 8, 2011, the California Supreme heard oral argument in the pending case of *Brinker v. Superior Court*. Among the various issues in the case is the question of whether employers must "ensure" that employees take required meal periods or only "provide" employees meal periods. The Court's written decision is expected before February 6, 2012 and is expected to affect most employers' practices. We will provide an update as soon as the Court issues its decision.

If you have any questions regarding this alert, please contact:

Dwayne P. McKenzie at 310.284.2200 or dmckenzie@coxcastle.com
John S. (Rocky) Miller Jr. at 310.284.2235 or rmiller@coxcastle.com
Charles E. Noneman at 310.284.2236 or cnoneman@coxcastle.com