

NEW EMPLOYMENT LAWS AND REQUIREMENTS FOR 2013

Each January, California welcomes 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 1964 – Expansion of Protections Against Discrimination. California's Fair Employment Housing Act (FEHA) defines and protects against unlawful discrimination. AB 1964 expands the discrimination protections and reasonable accommodation requirements under FEHA to cover religious dress and grooming practices. A "religious dress practice" is construed broadly and includes wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and other items that are part of an individual's observance of his or her religious creed. A "religious grooming practice" includes forms of head, facial, and body hair that are part of an individual's religious observance. Employers should amend their discrimination policies if necessary and ensure their human resources personnel are sensitive to these expanded requirements.

AB 1844 – Disclosure of Social Media Information. AB 1844 prohibits an employer from requesting or requiring that an employee disclose user or password information for accessing personal social media, that an employee access social media in the presence of the employer, or that an employee divulge any personal social media. However, AB 1844 is not intended to affect an employer's existing right and obligation to request that an employee divulge personal social media reasonably relevant to an investigation of employee misconduct or violation of law. On the heels of decisions of the National Labor Relations Board concerning employer social media policies, AB 1844 further emphasizes that employers must be cautious in how they treat employee social media.

AB 2674 – Employee Payroll and Personnel Records. AB 2674 makes important modifications to employers' responsibilities with respect to payroll and personnel records of employees. AB 2674 specifies that the copies of itemized wage statements an employer must maintain be either a duplicate of the statement provided to the employee or a computer-generated record that accurately shows all of the information required to be included on the statement. AB 2674 also clarifies that both current and former employees are entitled to inspect personnel records; that personnel records must be provided within 30 days following receipt of a written request by the employee or the employee's representative; how requests for records may be made; how records must be produced or made available; what information may be redacted from personnel files by the employer; and the number of requests to which employers must respond. Exemptions are provided with respect to certain employees covered by collective bargaining agreements. Employers should ensure that their recordkeeping and disclosure practices are in compliance with these new, detailed requirements, including preservation of itemized wage statements and personnel files for three years.

SB 1255 – Injury for Failure to Provide Itemized Wage Statements. Existing law provides that an employee suffering injury as a result of an employer's knowing and intentional failure to provide itemized wage statements is entitled to damages, costs and attorneys' fees. SB 1255 provides that an employee is deemed to suffer injury if the employer completely fails to provide a wage statement, or fails to provide a wage statement from which the employee can promptly and easily determine the following: the amount of gross or net wages paid, the deductions made from gross wages, the name and address of the employer, and the name of the employee and only the last four digits of the employee's social security number. Once again, employers should ensure that their payroll and recordkeeping processes are in compliance with wage statement requirements.

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AB 1744 – Itemized Wage Statement Requirements for Temporary Service Employers. Effective July 1, 2013, AB 1744 imposes additional requirements on temporary service employers to provide particularized information regarding assignments on employee wage statements and on initial wage and employment notices required under Labor Code section 2810.5. AB 1744 necessitates changes to the Labor Commissioner’s form notice under Labor Code section 2810.5, which the Labor Commissioner is expected to issue prior to the effective date.

SB 1193 – Human Trafficking Posting Requirements. SB 1193 requires certain businesses and establishments to post a Department of Justice model notice containing information regarding slavery and human trafficking. Businesses subject to the posting requirement include on-sale general public premises and licensees under the Alcohol Beverage Control Act, emergency rooms with general acute care hospitals, urgent care centers, primary airports, intercity passenger rail or light rail stations, farm labor contractors, and privately-operated job recruitment centers.

SB 863 – Workers’ Compensation Reform. SB 863 enacted significant changes to California’s workers’ compensation system, including efforts to minimize delays and costs of adjudicating workers’ compensation claims, providing for independent medical review, and reducing the number of liens. Employers should work with their workers’ compensation carriers to identify what steps may be needed to take advantage of and implement the reforms.

Important Reminder – Written Commission Agreements. Last year, AB 1396 required that all commission payment arrangements with employees be maintained in a written commission agreement provided to the employee and that the employer must obtain a signed receipt from the employee. AB 1396 takes effect January 1, 2013. Thus, employers must have all employee commission arrangements documented by the end of this month. Careful attention should be given to drafting these pay arrangements, particularly commission plans applicable to multiple employees.

If you have any questions regarding any of the foregoing new laws or need assistance with any labor or employee relations matter, please contact:

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