

MAJOR DEVELOPMENTS IN EMPLOYMENT LAW FOR 2012

Significant legislation, which directly affects employers, will become effective on January 1, 2012. Below is a brief summary of the major bills signed by Governor Brown which could potentially impact your business.

Credit Reports (AB 22)

Assembly Bill 22 prohibits employers from obtaining credit reports for purposes of background checks of applicants and employees.

However, there are exceptions to this general rule. For example, employers are permitted limited use of credit reports to consider: (a) certain managerial positions; (b) State Department of Justice employment; (c) law enforcement positions; (d) positions involving regular access to confidential information; (e) positions involving handling financial accounts of an employer, including transfer of funds, signatory on bank and credit card accounts, and entering into financial transactions on behalf of employer; and, (f) positions involving regular access to at least \$10,000 in cash of employer, clients or customers.

It is noted, that credit checks are prohibited for positions involving processing of credit card applications and routine solicitation for retailers.

Employers who decide to use credit reports must provide written notice to the applicant or employee that the report is being requested, and they must also provide the specific reason for the request.

Employee Wages (AB 469)

This new law requires an employer to pay wage restitution to an employee, if the employer pays the employee less than minimum wage. Employers must provide employees with a notice at the time of hiring, which specifies the rate and basis (i.e., hourly, salary, commission, etc.) of the employee's wages; a description of the regular paydays; the employer's and the workers compensation carrier's name, address, and telephone numbers. In the event the employer wishes to make changes to the information in the notice, it must give employees seven calendar days notice, unless the information had already been reflected on a paystub or in some other timely written notice. Misdemeanor criminal sanctions and civil penalties will be imposed for violations.

Leaves of Absence (AB 592)

Supplementing existing requirements under the California Family Leave Act ("CFLA"), this bill prohibits employers from interfering with or restraining employees from exercising, or attempting to exercise, any rights afforded them under the CFLA.

Maternity Health Care Services/Leave (AB 210 & SB 222)

Starting July 1, 2012, all individual health and group health insurance policies are required to provide coverage for maternity services for all covered insureds. This means that women who take maternity leave are able to maintain their health insurance coverage

Gender Expression (AB 887)

This bill makes changes to provisions of employment discrimination law and clarifies gender discrimination prohibition to include “gender expression”, meaning an individual’s appearance and behavior, whether or not it is stereotypical of the person’s sex assigned at birth. Employers must allow employees to dress or appear in accordance with the employee’s chosen gender expression.

Classification of Independent Contractors (SB 459)ii[iii]

Employers who intentionally misclassify employees as independent contractors can now be assessed \$5,000 to \$10,000 per violation, or \$10,000 to \$25,000 in addition to the charge assessed for the specific violation, if evidence of a pattern of violations exists. These penalties may also be enforced against an employer’s successors.

NLRB NOTICE POSTING EXTENSION: As a reminder, the National Labor Relations Board extended the deadline to January 31, 2012 for posting notices of employees’ right to unionize/demonstrate.

If you have any questions about the new laws, or need assistance implementing them, please contact our office.

Patricia Jeanne Howze, J.D.

Copyright© 2012 by Patricia Jeanne Howze. All rights reserved. Reproduction of this publication by any means without the express written permission of Patricia Jeanne Howze is prohibited.

Reproduction

This is a copyright publication. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including, but not limited to, photocopy, recording, or any information storage and retrieval system, without written permission of Patricia Jeanne Howze.

Disclaimer

Century Update newsletter articles should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. If you have questions concerning particular situations and specific legal issues, please contact your attorney.