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LARRY LEVY

# H.R. Alert January 2013

## An Overview of New 2013 Laws Affecting California Employers

Several new employment laws will affect California employers' day-to-day operations and policies in 2013. This H.R. Alert identifies some of the noteworthy new laws from the California Legislature.

There have been significant changes in key areas, such as anti-discrimination protections, employee access to personnel records and employer access to personal social media accounts. Other laws relate to specific industries, such as farm labor contractors and temporary services employers.

Unless specified, all new legislation goes into effect on **January 1, 2013**.

### **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 Breast feeding and related medical conditions. There is a mandatory update to the Discrimination and Harassment policies.

### **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.

### **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**

## **Pregnancy Disability**

Amended pregnancy disability regulations take effect **December 30, 2012**. The approved pregnancy disability regulations make significant changes to state law, including:

- A change to the definition of "four months."
- An expanded definition of when a woman is "disabled by pregnancy."
- Clarification of an employer's responsibilities regarding the reasonable accommodation or transfer of employees affected by pregnancy, childbirth or related medical conditions.
- An expansion of protections to include that it is unlawful to discriminate against or harass an applicant or employee based on "perceived pregnancy."

## **Disability Discrimination and Accommodation**

Amended disability discrimination and accommodation regulations take effect **December 30, 2012**. The changes to the disability regulations include an expansion of the definitions of "mental" and "physical" disability and a detailed description of the interactive process and the obligations of both the employer and the employee during that process. The amended regulations include specific examples of what constitutes a reasonable accommodation, including a discussion of when a leave of absence might be an appropriate accommodation.

## **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.

## **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.

## **Commission Agreements**

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.

## **Fixed Salaries and Overtime**

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 non-overtime hours, notwithstanding any private agreement or "explicit mutual wage agreement" to the contrary.

## **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.

## **Wage Garnishment**

AB 1775 increases the amount of wages that are exempt from garnishment. This amendment is effective **July 1, 2013**.

## **Workers' Compensation Reform**

SB 863 is workers' compensation reform legislation. The legislation offsets necessary increases in permanent disability benefits and potentially lowers system costs for employers. Some of the legislative reforms take effect **January 1, 2013**, but many of the laws require administrative/regulatory action before implementation.

## **Accessibility Reform**

SB 1186 limits frivolous litigation regarding technical violations concerning disability access by reducing statutory damages, putting into place new provisions to prevent "stacking" of multiple claims to increase statutory damages and banning letters making demands for money before litigation.

## **FEHC Eliminated, Duties Transferred to the DFEH**

SB 1038 eliminates the California Fair Employment and Housing Commission (FEHC). The biggest change is the manner in which charges of discrimination or harassment are handled.

The administrative hearing process before the FEHC is eliminated. Instead, the DFEH will be able to bring civil actions on behalf of a complainant directly in court and require mandatory dispute resolution.

## **Intellectual Disabilities**

AB 2370 and SB 1381 substitute the term "intellectual disability" for the outdated term mental retardation in many statutes and regulations.

## **Unemployment Insurance: Overpayment and Penalties**

AB 1845 provides that the Employment Development Department (EDD) can deny reimbursement to an employer for any overpayments made to its unemployment insurance reserve accounts if the EDD determines that the overpayment resulted from an employer's failure to respond to or provide adequate information to the EDD. This new law applies to benefit overpayments established on or after **October 22, 2013**.

## **Prevailing Wage**

Under AB 2677, increased employer payment contributions that result in a lower hourly straight time or overtime wage do not constitute a violation of the applicable prevailing wage determination as long as certain specified conditions are met.

## **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.

## **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.

If you have any questions please call me at (415) 892-1497

Larry Levy