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**HEADS UP!**  
**Lawsuit Prevention for Employers**

**TEST YOUR FIRM'S COMPLIANCE WITH RECENT LABOR LAWS**

Because some of the new employment laws taking effect on January 1, 2015 clarify or strengthen laws originally enacted in 2012 or thereafter, this is a good time to review your firm's compliance with labor laws enacted in California since January 1, 2012. The next issue of "HEADS UP!" will summarize significant new laws that will take effect on January 1, 2015.

**New Laws for 2012:**

1. Gender Identity, Gender Expression and Genetic Information a New Protected Class, under California law. This status enables employees to sue for punitive damages in the event that a termination or other employment action is found to be based on protected characteristics. Punitive damages are generally considered the most potentially lucrative source of jury awards. As the number of protected classes increases, the number of protected employees and applicants grows commensurately. This means that contemplated terminations become "high (legal) exposure discharges" with increasing frequency. These require more care, time and attention to implement. This has the inevitable effect of delaying the required action, and thus leaving ever-increasing numbers of incompetent and disruptive employees in the workplace due to fear on the part of employers and their supervisors of lawsuits if they are fired.
2. Written Notice of Compensation Terms and Seven Other Elements Required: The California Wage Theft Prevention Act requires that all non-exempt employees must be provided written notice of eight separate terms of employment, effective January 1, 2012. These include the precise terms of the compensation arrangement applicable to them, including rate of pay, such as hourly wage rate and specific commission terms, including overtime rates at time of hire, the employer's workers compensation carrier and its contact information and any fictitious business names used by the employer. If any terms change during the term of employment, written notice is required within seven days.

3. Pursuit and Use of Credit Reports Prohibited or Severely Restricted in connection with employment-related decisions made by most employers.
4. Willful Misclassification of Independent Contractors Prohibited, and violators are subject to monetary and other penalties. This was designed to address the common problem of employers attempting to avoid the numerous legal and record-keeping requirements applicable to employees.
5. Employers Must Pay for Medical Insurance Premiums for employees on pregnancy disability leave.
6. Lactation Accommodation is Now Required, which obligates employers to provide time from work, suitable facilities (expressly excluding restrooms) and other accommodations that the circumstances may reasonably require.
7. Pay Stubs Must Provide Nine Categories of Information. It is estimated that up to ten class action lawsuits are filed in California each day for pay stub violations.
- \* 8. Kin Care Leave Law Now Entitles Employees to Use Sick Leave to care for close family members. Employers must allow one-half of accrued benefits to be used for this purpose. Accrued vacation benefits are subject to similar rules. Under California law, any day that can be used for vacation, is subject to the same regulations applicable to vacation benefits, regardless of how an employer designates or describes the time off. Vacation benefits must be paid at the rate of pay in effect at the time it is paid, not that in effect when it is earned.
9. Employers Must Grant Leave for Organ/Bone Marrow Donors. Applies to Employers of 15 or more employees, and provides for the use of accrued sick leave and/or vacation benefits during leave.
10. Gender Identity and Gender Expression are New Protected Classes, which has many ramifications, such as its effect on workplace dress and grooming requirements.

### **New Laws for 2013:**

1. Religion-Based Grooming and Dress Must be Accommodated by employers, effectively prohibiting employer regulation of same.
2. Personnel File Rules Provide Greater Access to Employees (and former employees). Now, “authorized representatives” have access to “personnel files,” a term which is defined to require disclosure of far more information than was previously required. The new law imposes more demanding deadlines for producing copies and/or access to requested information, employer record retention requirements and penalties applicable to employer violations.

3. Signed, Written Commission Agreements Must be Provided to Any Employee Who is Paid in Whole or in Part by commission. This written agreement must describe all material terms of the arrangement, including precisely how and when commissions are computed and paid, and precisely what is required to earn them, with a signed copy to commissioned employees.
4. The Fixed Salary of Non-Exempt Employees May Not Include Overtime Compensation. Any agreement purporting to include payment for overtime hours in such an employee's salary is legally unenforceable, even if it is part of a formal, written and signed contract.
5. Breastfeeding Now Included in Protected Class of "Sex," for discrimination purposes, thus subjecting any violation of lactation accommodation requirements, for example, far more serious monetary sanctions.
6. Employers Prohibited From Accessing Social Media Accounts of employees and from related activities, such as requesting user names and passwords.
- \* 7. Employers Must Provide "Cool-down Rest Period" for employees working primarily outdoors, to prevent heat-related health problems.

#### **New Laws for 2014:**

1. Military and Veterans a New Protected Class, adding them to the ever-growing list of California's protected classifications.
2. Domestic Violence Victims' Protection Expanded. Employers are now prohibited from taking any adverse action against employees victimized by "stalking," domestic violence and/or sexual assault, if employer is aware of same. Employers are required to "reasonably accommodate" such employees, and to engage in a timely, good faith interactive process with victims.
3. Crime Victims' Protection Expanded by both adding 11 new crimes entitling crime victims to leave, and expanding the list of relatives of employees whose victimization creates the right to leave. Siblings and guardians are now added to the previous list of: parents, spouses, children, domestic partners and children of domestic partners. Employees have the right to take time off from work at a victim's request to appear in court, to be heard at any proceeding (including delinquency proceedings, or those involving a post-arrest release-related decision, plea, sentencing or post-conviction release-related decision) which may affect the rights of a victim of a covered offense.
4. Employers Criminally Liable for Failure to Remit to Taxing Agencies any amounts withheld from employee wages.
5. Employers Required to Compensate Employees For Any Missed Breaks by paying one additional hour's wages for any rest or meal break, or portion thereof, that was not provided as required by law, at the employee's regular rate of pay.

6. Employers May Not Prohibit Reporting of a Suspected Workplace Crime by enacting or enforcing any rule preventing employees from disclosing to a government agency information relating to a violation of law or regulation, as long as the informer reasonably believes that the information relates to a violation. Employers are also prohibited from retaliating against employees for reporting or refusing to participate in any activity that would result in a violation of law or regulation.
- \* 7. Suspension of Employer's Business License for Immigration-Related Retaliation. This law prohibits retaliation against employees for complaining of unpaid wages or for engaging in protected activity related to enforcing an employee's or applicant's rights in the workplace.
- \* 8. Employers Prohibited From Reporting or Threatening to Report the immigration status of an employee, former employee or prospective employee, or that of their family members, based on such person's exercise of a legal right or for engaging in legally-protected conduct.
- \* 9. Employers Must Permit Emergency Responder Leave to employees who perform emergency duty, as well as for emergency rescue training.
- \* **Indicates statutes that have been clarified and/or strengthened by new laws taking effect in 2015.**