



KD Alert: New CA Employment Laws Confront Employers

By Sarah Goldstein and Rina Spiewak
(January 29, 2013)

2013 will prove to be another challenging year for employers. California Governor Jerry Brown has signed into law several new pieces of legislation that address a wide variety of workplace issues. Perhaps not surprisingly, as discussed below, these new laws continue the national trend of expanding employee rights while planting more legal landmines for businesses to avoid.

Equal Employment Opportunity Compliance

Religious observance: California's Fair Employment and Housing Act ("FEHA") prohibits discrimination in the workplace on the basis of religion, among other categories. Government Code Section 12926(p), which provides that religious dress and grooming practices are covered by FEHA's protection against religious discrimination, has been amended to provide that accommodations segregating employees from the public or from other employees are not permissible. As an example, employees who grow beards for religious reasons may not be prohibited from interacting with an employer's customers.

Breastfeeding: FEHA also prohibits employment discrimination on the basis of sex. For FEHA purposes, sex includes gender, pregnancy, childbirth, and medical conditions that relate to pregnancy or childbirth. Amended Government Code Section 12926(q) expands the definition of sex to include breastfeeding or medical conditions relating to breastfeeding. As such, breastfeeding women at work are now a protected class under state law.

Personnel Records

Right to Inspect Personnel Records: Labor Code Section 1198.5 was amended to require an employer to maintain personnel records for three (3) years following an employee's termination. A current or former employee (or his or her representative) must be provided with an opportunity to inspect and receive a copy of such records within thirty (30) days of such request. An employee loses these rights if a lawsuit is pending that involves his/her personnel matter. In addition, an employer need not comply with more than fifty (50) such requests per month from all of its employees. An employer that violates this provision by denying its employees access to such records will now be guilty of an infraction rather than a misdemeanor.

Social Media

Prohibitions: "Social media" can generally be defined as "an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant messages, text messages, e-mail, online services or accounts, or internet website profiles or locations." Added to the Labor Code in 2013 is Section 980, which prohibits an employer from requiring employees to disclose their usernames and/or passwords used to access social media. An employer will now also similarly be prohibited from requiring an employee to access social media in its presence.

Wage and Hour

Itemized wage statements: An employer is required semi-monthly or at the time wages are paid to provide each employee with an accurate, itemized wage statement. In the past, an employee could recover up to \$4,000.00 in damages if it could be proven that the employee was injured as a result of a knowing and intentional failure by the employer to comply with this requirement. Labor Code Section 226 now expands this right by providing that an employee will have suffered an injury whenever an employer fails to provide a wage statement, itemized or otherwise. In the context of employment litigation, an injury is a harm that is suffered by an employee for which s/he can recover damages.

Itemized wage statements for temporary employees: Amended Labor Code Section 226 now provides that wage statements for temporary employees must include the rate of pay and total hours worked for each assignment (there is no such requirement for non-temporary employees). Such itemization of wage statements for temporary employees had not previously been required. If the company is a temporary service employer, then at the time of their hire, such temporary employees must be provided with a Wage Theft notice that includes the name, physical address of the company's main office, mailing address (if different from the physical address), and telephone number, and any other information that the Labor Commissioner considers to be "material and necessary."

Overtime: Labor Code Section 515 has been amended so that payment of a fixed salary to a non-exempt employee will be considered compensation only for that employee's regular, non-overtime hours, notwithstanding any private agreement to the contrary. This provision makes clear that employment agreements may not include overtime pay as part of a non-exempt employee's fixed salary.

Employment Contract Requirements: When an employer and an employee enter into an employment contract for services that are to be rendered within California, and the employee is to be paid on a commission basis, then the contract must be in writing and set forth the method by which commissions are to be calculated and paid. However, Labor Code section 2751 now exempts from this requirement temporary, variable incentive payments that would increase the employee's payments pursuant to the written contract.

Employment of Infants: Infants under the age of one (1) month may not be employed on a motion picture set or location unless a medical certification is provided by a physician and surgeon board certified in pediatrics. Labor Code 1308.10 now provides that such a medical certification must be provided before a temporary permit for the infant's employment may be issued.

Impact on the Business Community

Many, if not all, of these new laws may be difficult to understand and ensure full compliance. It is anticipated that workplace claims will continue to rise until companies can get a firm handle on their new obligations. At a minimum, managers and supervisors need to be educated and trained so that they are at least familiar with the changes in the law and can act to prevent claims from arising. If you have any questions, or if we can be of any assistance in helping you to implement these new requirements, please do not hesitate to contact us.