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California Employment Law Newsletter

What's New for California Employers?

Ronald J. Souza
Lynch, Gilardi & Grummer
475 Sansome Street, Suite 1800
San Francisco, CA 94111
(415) 397-2800

The following are the significant (1) new employment laws for 2010, and (2) handbook revisions for 2010.¹

NEW 2010 EMPLOYMENT LAWS

Alternative Workweek: Effective 5/21/2009, California employers were provided greater flexibility in scheduling alternative workweeks. The requirements for (1) secret ballot elections, (2) definition of a “work unit” have been changed. (C.L.C. § 511.)

Cal-COBRA Notice: There are new notice obligations on employers, including a requirement that employers notify eligible individuals of a special election opportunity for previously defined COBRA coverage. (AB 23.)

Electronic Discovery: Expands discovery rights to permit a party to obtain discovery of “electronically-stored information.” Numerous procedural changes are incorporated. (AB 5.)

Wage Withholding: Increased wage withholding tables and accelerated rates for individuals and corporations are specified. (AB X4 17.)

Hate Crimes: California’s Hate Crime Law prohibits the display of certain symbols (i.e., swastikas, burning crosses, nooses, etc.) with the intent to terrorize

persons. Up to \$5,000 fines for the first offense. (AB 412.)

Workers Compensation: A new law precludes an employer from refusing to pay the workers compensation medical treatment services if the employer approved those services before the treatment was provided. (AB 361.)

Workers Compensation: Injuries inflicted by third parties at the workplace because of an employee’s protected characteristic (e.g., sex, race, religion, etc.) are not automatically disqualified from coverage under the “personal relationship” or “personal motivations” exception in workers compensation policies.(AB 1093.)

Workers Compensation: The penalty for failure to procure workers compensation coverage increased from \$1,000 to \$1,500. (SB 313.)

Price Discount Discrimination: Business establishments are prohibited from discriminating against customers because of protected characteristics (e.g., sex, race, religion, etc.) in providing price discounts. (SB 367.)

Computer Professional Exemption: The minimum hourly pay rate for computer professionals will remain at \$37.94/hour; \$6,587/month, and \$79,050/year. (C.L.C. § 515.5(a)(4).)

RECOMMENDED 2010 HANDBOOK REVISIONS

Employers should review the following provisions in their handbooks to assure they address recent changes in the law.

¹ This summary is intended to be a brief overview of significant legal developments and is not an in-depth analysis of the cases or statutes discussed. Our clients are advised to contact their employment attorney before making significant decisions related to the legal developments reported herein.

FMLA Regulations: The U.S. Dept. of Labor (DOL) revised the FMLA significantly in 1/2009 and to a more limited extent recently. DOL requires employers to provide each employee with a notice of their FMLA rights in a handbook or handout at the time of hire.

Alternative Workweeks: California employment law has recently been revised regarding “alternative workweek arrangements” (see above). Employers who define working hours in their handbooks may wish to incorporate reference to these changes.

Vacation Accrual: While employers cannot require employees to forfeit earned vacation, a recent court decision provides employers with flexibility in determining how and when vacation entitlement accrues.

Commissions/Bonuses: Both commissions and bonuses are considered “wages” under California law. But an employer may specify what an employee must do to qualify for the same.

Genetic Discrimination: Federal law known as the Genetic Information Non-discrimination Act (GINA) now prohibits discrimination on the basis of genetic information. Employee handbooks should include genetic information as a protected classification.

Trade Secret/Non-Compete Agreements: As California courts have consistently rejected policies prohibiting departing employees from soliciting customers and employees, these provisions should generally be eliminated from employee handbooks.

Workplace Privacy: Recent case law affirms an employer’s right to monitor employees’ activity within the workplace. However, employees may have an increased expectation of privacy in the use of their company computers or semi-private office space. Providing adequate notice of monitoring is an employer’s best assurance that privacy rights will not be violated.

Internal Investigations: Employers must increasingly conduct workplace investigations to address claims of discrimination or “whistleblowing.” Employers should make clear in their handbooks that employees are expected to cooperate with such investigations by making themselves available and answering questions honestly.

Acknowledgement of Receipt: Employers revising their handbooks should include an acknowledgement of receipt specifying the date of the new or revised handbook. The acknowledgement should make clear that the handbook does not create contractual rights and may be modified at any time. The “at will” nature of the employment relationship should be reiterated as to non-union employees.

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