New California Employment Laws

October 19, 2011

A number of new laws have been enacted recently. California employers will need to take prompt action to review and revise certain of their employment policies and practices. The following is a summary of the new laws that will have the greatest impact on California employers.

A New Document Required for California "New Hires"

This new law becomes effective January 1, 2012, and requires private employers to add another document to their new-hire package.

An employer must provide each nonexempt employee at the time of hire with a written notice that includes the following:

- The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable
- Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances
- The regular payday designated by the employer
- The employer's name, including any "doing business as" names used by the employer
- The physical address of the employer's main office or principal place of business and a mailing address, if different
- The employer's telephone number
- The name, address, and telephone number of the employer's workers' compensation insurance carrier
- Any other information the Labor Commissioner deems material and necessary

If an employer makes changes to the information listed above, it must provide notice of the changes to employees within seven days. This may be accomplished by providing a revised paycheck stub containing the new information.

The Labor Commissioner is required to prepare a template in accordance with this new law and will make it available for employers to use.

Lastly, this law does not apply to employees who are exempt from overtime laws, public employees, or certain employees covered by a valid collective bargaining agreement.

What to do

Employers should begin preparing the written notice so it can be included in their new-hire packages by January 2012. Employers also should compare their notice with the Labor Commissioner's template (once it is published) to ensure compliance.

Willful Misclassification of Workers as Independent Contractors

Under current law, if a company misclassifies a worker as an independent contractor, the consequences are severe and can include back taxes, wages and benefits, civil and criminal penalties, individual and class-action lawsuits, government audits, and enforcement actions. This new law, which became effective October 9, 2011, adds stricter penalties for employers found willfully (intentionally and voluntarily) to have misclassified workers as independent contractors, including the following:

- Fines of $5,000-10,000 for the first violation and up to $25,000 for repeat violations
- Prohibition on charging workers a fee or making any deductions from the worker's pay if such deduction would have been prohibited if the individual was an employee
- Notice and record keeping, using a state-created form, requiring the company to justify independent contractor classification for each worker so classified and advising the worker of the tax ramifications of the classification and of his/her rights to challenge the classification
- Liability for any person who knowingly advises an employer to misclassify a worker as an independent contractor (employer's agents and legal counsel are exempt)

What to do

Employers should immediately undertake comprehensive reviews of the classification of their independent contractors and make sure they are properly classified.

Keep in mind that whether an individual “wants” or requests to be classified as an independent contractor makes no difference. The issue is whether the worker can fit into that classification as mandated by the IRS and the EDD.

Restrictions on the Use of Credit Checks by Employers

This new law, effective January 1, 2012, prohibits an employer or prospective employer, except certain financial institutions, from obtaining a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following:

- A position in the state Department of Justice or law enforcement
- A managerial position (a position that qualifies for the executive exemption from overtime)
- A position for which the information contained in the report is required by law to be disclosed or obtained
- A position that generally involves regular access to specified personal information
- A position in which the person would be a named signatory on bank or credit card accounts, or would transfer money or enter into financial contracts
- A position that involves access to confidential, proprietary, or trade secret information
- A position that involves regular access to $10,000 or more of cash

What to do

- Employers should evaluate each position and designate whether or not the position is one in which an exception applies.
- When a report is permitted under this new law, employers must still comply with the procedures required under the Federal Fair
  Credit Reporting Act and California law.
- Employers still must give written notice to the applicant or employee that the credit report is being requested.
- The report must be provided free of charge to the employee.

If employment is denied on the basis of information obtained from the credit report, the employer must advise the applicant and provide the name and address of the credit reporting agency that supplied the report Laura P. Worsinger is Senior Counsel at Dykema Gossett LLP in Los Angeles. Her practice focuses on all aspects of employment law, counseling, and litigation. Please contact Laura at (213) 457-1744 or lworsinger@dykema.com, or your Dykema relationship attorney if you have questions or require assistance in implementing these new California employment laws.

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Practice Areas

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