

EMPLOYMENT,
LABOR &
WORKERS'
COMPENSATION

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Employer Alert

2013 Legal Update!

What Every Employer Needs To Know.

Employment Law Workshop

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TABLE OF CONTENTS

New California Laws in 2013 1
Notice to Employee, Labor Code §2810.5 5
Sample Meal and Rest Period Policy Post Brinker 7
Sample Religious Dress and Grooming Policy 8

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NEW CALIFORNIA LAWS IN 2013
THAT AFFECT EMPLOYERS

Several new bills in California, effective as early as January 1, 2013, will greatly affect how we handle employment issues. These bills are summarized below.

AB 2386 – prohibits discrimination in employment based on breastfeeding.

This bill changes anti-discrimination law to state that discrimination based on “sex,” which already includes pregnancy, includes discrimination based on breastfeeding or medical conditions related to breastfeeding. It is effective January 1, 2013, but also states that it is “declaratory of existing law,” meaning it will likely be applied retroactively. Because of these changes, employers should accommodate the reasonable needs of employees who are breastfeeding their babies, including the need to take medical leaves related to breastfeeding.

AB 1964 – expands and clarifies the scope of religious protections under the Fair Employment and Housing Act.

This bill significantly alters the definition of religion under the Fair Employment and Housing Act, which prohibits discrimination in employment, effective January 1, 2013. The bill inserts specific examples into some of the statute’s definitions. “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” will now be defined to include “all aspects of religious belief, observance, and practice, including religious dress and grooming practices.” The definition of “religious dress practice” will include “the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed.” Also, the definition of “religious grooming practice” will include “all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.”

The new law explicitly requires accommodation of a person's religious dress and practice. Furthermore, the law is explicit in saying “accommodation of religious practice” can not mean segregating employees from other employees or the rest of the public because of religious dress or practice.

The practical effect of this law is that it requires employers to be sensitive to employee's religious beliefs. At the very least, employees who want to wear religious jewelry or clothing (e.g. head scarves), and follow their own religious grooming practices regarding hair need to be treated equally, irrespective of religion.

AB 1844 – restricts the use of social media in hiring decisions.

This bill, effective January 1, 2013, prohibits employers in California from requiring an employee or applicant to: disclose his or her passwords to social media accounts, access social media in the employer's presence to allow the employer to see it, or disclose social media content as a condition of hiring. The bill also prohibits employers from firing or discharging employees for refusing to divulge social media content or passwords or refusing to allow employers access to their social media accounts.

The bill does not prevent employers from requiring access to an employee's personal social media if it reasonably believes the content is relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations. The bill also does not prevent employers from requesting passwords to access employer-issued electronic devices.

Because of this new prohibition, employers should ensure that their hiring process and employment practices do not include review of employees' private social media.

AB 2343 – requires employers who use criminal background information in employment decisions to give copies to applicants or employees.

This bill requires employers who have received state or federal summary criminal history information in connection with an employee's employment, to furnish a copy of the information to the employee or applicant if the information is a basis for an adverse employment, licensing, or certification decision.

AB 1396 – requires written commission agreements with employees.

This bill requires employers, by January 1, 2013, to have written agreements with employees who are paid on a commission basis. The agreement must "set forth the method by which the commissions shall be computed and paid." The law requires employers to give copies of the agreement to the employee and obtain a signed copy from the employee.

The law also states that, if a commission agreement expires but the employee continues to work under that commission structure, all the terms of the prior agreement remain in effect until the old agreement is superseded by a new written agreement or is terminated by either the employer or employee.

AB 2103 – changes the way salaried, non-exempt employees are paid wages.

This bill changes the law to mandate that, starting in 2013, salaries paid to non-exempt employees by law only compensate them for regular hours, not overtime hours, worked during the week, regardless of any contrary agreement between the employer and employee. This means if an employee works overtime hours, an employer has to pay that employee additional hourly wages at the rate of 1/40 their salary for each hour over 40 worked in a week or over 8 in a day, in addition to overtime wages for each of those hours. The employer and employee cannot agree to waive this requirement through contract or otherwise. Violations can subject the employer to criminal penalties.

This new requirement is in addition to the current requirement to pay overtime wages for salaried non-exempt employees at the rate of 1/2 their "regular rate of pay" for every hour worked over 40 in a week and 8 in a day. The regular rate of pay is generally their entire wages for the week (including most bonuses), divided by 40.

AB 1744 – requires temporary services employers to include additional information on paycheck stubs for temporary employees.

Most temporary staffing agencies will be required, starting July 1, 2013, to list on each employee's wage statement the rate of pay and hours worked for each assignment the employee worked in that period. The following information must also be provided to employees in a written notice at the time of hire, along with other information already required by law: the name of the agency, the physical address of the main office of the agency, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work.

AB 2674 – clarifications to the requirement to maintain copies of wage statements and allow inspection of personnel files.

This law requires employers, starting January 1, 2013, to allow an employee - or an employee's authorized representative - to not only inspect, but receive copies of a personnel file, within 30 days of receipt of a written request (except during the pendency of a lawsuit.) The employer must provide forms to request such records, but the employee is not required to use the form to make the request. The employer and employee can agree to extend the 30 day period to 35 days. The request and inspection of the records may be made by a "representative" of the employee authorized in writing to inspect or receive a copy of the records.

The employer may redact from the records the names of non-supervisory employees. Employers do not have to provide: records related to investigation of a criminal

offense; letters of reference; ratings, reports, or records obtained before the employee's employment; records prepared by identifiable examination committee members; or records obtained in connection with a promotional examination. For former employees, the employer only has to respond to one request from each former employee to inspect or receive a copy of his or her records per year.

Also, employers are currently required to keep copies of wage statements on each employee. This new law clarifies that the "copy" can be a computer generated report, provided the report contains all the information required by the statute, which includes: gross wages, total hours worked (except for salaried, exempt employees), the number of piece-rate units earned and any applicable piece rate (if applicable), all deductions, net wages, the inclusive dates of the pay period, the name and address of the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

SB 1255 – penalties for failure to issue employees wage statements broadened.

Currently the law allows employees to collect a penalty from employers who fail to issue them wage statements, or fail to include all required information on the wage statements, but only if the employee suffers "injury." This bill amends the Labor Code, as of January 1, 2013, to specify that an employee "suffers injury" simply by not receiving a wage statement, or by receiving an incomplete wage statement from which the employee cannot accurately determine the amount of gross or net wages paid, the deductions taken, or other specified information. However, the employer is not responsible for isolated, unintentional clerical errors that cause a violation of the statute.

This bill's practical effect is that it expands the scope of the penalty, so that it applies to many more situations in which employers fail to issue accurate wage statements. Employers should continue to be careful and ensure they fully comply with the wage statement requirements for every employee and every paycheck.

SB 1193 – human trafficking notice.

This bill requires certain businesses to post a notice concerning human trafficking by April 1, 2013. The Department of Justice will develop a model poster. The businesses required to comply with this notice include businesses licensed under the Alcoholic Beverage Control Act, adult oriented businesses, primary airports, intercity passenger rail or light rail stations, bus stations, truck stops, emergency rooms, urgent care centers, farm labor contractors, privately operated job recruitment centers, roadside rest areas, and certain businesses that offer massage or bodywork services.

NOTICE TO EMPLOYEE
Labor Code section 2810.5

EMPLOYEE

Employee Name: _____

Start Date: _____

EMPLOYER

Legal Name of Hiring Employer: _____

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? Yes No

Other Names Hiring Employer is "doing business as" (if applicable):

Physical Address of Hiring Employer's Main Office:

Hiring Employer's Mailing Address (if different than above):

Hiring Employer's Telephone Number: _____

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): Hour Shift Day Week Salary Piece rate Commission

Other (provide specifics): _____

Does a written agreement exist providing the rate(s) of pay? (check box) Yes No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? Yes No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: _____

WORKERS' COMPENSATION

Insurance Carrier's Name: _____

Address: _____

Telephone Number: _____

Policy No.: _____

Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: _____

ACKNOWLEDGMENT OF RECEIPT
(Optional)

(PRINT NAME of Employer representative)

(PRINT NAME of Employee)

(SIGNATURE of Employer representative)

(SIGNATURE of Employee)

(Date)

(Date)

The employee's signature on this notice merely constitutes acknowledgment of receipt.

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.

MEAL AND REST PERIOD POLICY

Employees that are scheduled to work more than five (5) hours must take a thirty (30) minute uninterrupted meal period, off the clock, no later than the end of the fifth hour of work. Employees are entitled to be relieved of all their duties and free to take care of personal matters during that time. Employees that have a six (6) hour shift may voluntarily waive the meal period if they execute a Six Hour Shift Waiver Form. Please see the Human Resource Department.

The Company provides a paid ten (10) minute rest period for every four (4) hours of work or major fraction thereof. An employee who works between three and a half (3 1/2) to six (6) hours is entitled to one (1) ten minute break, an employee who works over six (6) hours is entitled to a second ten minute break. An employee that works less than three and a half (3 1/2) hours is not entitled to receive a paid ten (10) minute rest period. Please check with your supervisor for the appropriate time to take meal and rest breaks.

Meal periods and rest periods may not be waived to leave early nor may they be consolidated for a longer break or meal period.

It is against Company policy for any employee to perform work during meal or rest periods. It is against Company policy to return to work before the end of a 30 minute meal period or ten minute rest break. It is also against Company policy for employees to work "off the clock," that is, perform work without recording it as time worked on their timesheets.

Employees working more than ten (10) hours are entitled to a second meal period before end of the tenth hour of work, unless the employee voluntarily executes a Twelve Hour Shift Waiver Agreement and has taken the first meal period.

The undersigned acknowledges that he or she has read and understands the foregoing Meal and Rest Period Policy.

Employee Signature

Date

SAMPLE RELIGIOUS DRESS AND GROOMING POLICY

[EMPLOYER] will accommodate employee's religious beliefs and practices unless doing so would impose an undue hardship. Religious dress practices include the wearing of religious clothing, head or face coverings, jewelry, artifacts and any other item that is part of the observances by an individual of his or her religious creed. Religious grooming practices includes all forms of head, facial and body hair that are part of the observances by an individual of his or her religious creed.