

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.

Main Office

15760 Ventura Blvd.
Suite 1200
Encino, CA 91436
(818) 986-7561
Fax (818) 986-5147

Orange County Office
333 City Boulevard West
17th Floor
Orange, CA 92868
(714) 923-8666
Fax (714) 923-8667

Ventura Office
751 Daily Drive
Suite 325

Camarillo, CA 93010
(805) 987-7128
Fax (805) 987-7148

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.

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.