

California Employers, Be Prepared for 2012

As the new year approaches, employers need to be aware of recent changes to California employment law which become effective at the beginning of the year. As you prepare for 2012 by updating your handbooks, policies, and practices, here are some important changes to make sure you are in compliance with the law:

1. Increased Penalties for Willful Misclassification of Employees as Independent Contractors

A new California labor law prohibits the “willful misclassification” of employees as independent contractors. It also prohibits employers from charging individuals misclassified as independent contractors fees for things like equipment, space rental, services, or licenses, where applicable law would prohibit their charging these fees to employees. The law also establishes joint and several liability on anyone, other than an attorney, who knowingly advises an employer to treat an individual as an independent contractor to avoid employee status.

The law imposes a penalty of \$5,000 to \$15,000 for each violation. Moreover, if the employer is found to have engaged in a pattern or practice of violations, the penalty increases to as high as \$25,000 per violation. An employer violating the law may also be required to post a notice on its website that it has committed a “serious violation of law.”

Because the definition of “willful” is still in need of interpretation, employers must be particularly vigilant when classifying an individual as an independent contractor.

2. Wage Theft Prevention Act of 2011

As of January 1, 2012, most employers must provide to employees at the time of hire a written notice including the employee’s pay rate and basis thereof (whether hourly, daily, salaried, commission, etc.); allowances (such as for meals or lodging) included in the minimum wage calculation; overtime rates; the regular payday; the employer’s physical and mailing addresses and telephone number; the name, address, and telephone number of the employer’s workers compensation carrier; and other information deemed necessary by the Labor Commissioner.

Employers must also provide notice within seven days of any changes to this information unless the changes are reflected in a timely wage statement or other writing

required by law within seven days of the changes.

Excluded from this notice requirement are employees of any political subdivision, employees exempt from overtime payment; and employees covered under a collective bargaining agreement which establishes a regularly hourly rate of pay not less than 30% greater than California's minimum wage.

The Office of the Labor Commissioner is currently working on a template for this notice, which it expects to post on its website in mid-December 2011.

In addition to the notice requirement, this new Act increases and creates new penalties for Labor Code violations. Employers willfully failing to pay final orders for wages due may now face civil penalties of up to \$20,000 and may be charged with a misdemeanor for each offense. The Act also increases the time within which the Division of Labor Standards Enforcement may bring a civil action from one to three years. Furthermore, employees may now recover attorneys fees and costs incurred in enforcing judgments related to unpaid wages, and employers must now pay restitution to employees for violating the Labor Code.

3. Continued Health Coverage for Employees on Pregnancy Leave

Beginning January 1, 2012, all employers with at least five employees will be required to continue group health coverage for up to 16 weeks for employees on pregnancy-related disability leave. Although employers will be required to maintain coverage and to continue making the employer's payments toward premium costs for up to 16 weeks, employers may recover premiums paid if the employee does not return to work after all leave is exhausted.

4. Changes to the Overtime Law

Also effective January 1, 2012, the minimum rate of pay for computer software employees to qualify for the overtime pay exemption will increase from \$37.94 to \$38.89, if on an hourly basis; from \$6,587.50 to \$6,752.19, if on a monthly salary basis; and from \$79,050 to \$81,026.25, if on an annual salary basis. The minimum hourly rate of pay for the licensed physician and surgeon exemption will also increase from \$69.13 to \$70.86.

5. Health Insurance Benefits

Two new changes will impact employer-provided health care benefits. Beginning July 1, 2012, all health care plans and insurance policies will be required to provide coverage for behavioral health treatment for pervasive developmental disorders or autism. Also, effective at the start of the year, health plans and insurance policies may not discriminate between spouses or domestic partners of the different sex and those of the same sex when it comes to coverage.

6. Payroll Records

The time employers must maintain payroll records has been extended from two to three years.

7. Commission Agreements Must Be in Writing

Starting January 1, 2013, all commission pay agreements must be in writing and must set forth the method by which commissions are to be computed and paid. Every employee that is party to the contract must receive a signed copy and the employer must retain a signed receipt for the contract from each such employee.

It was a busy for year for California law makers, and this list includes only some of the new laws and changes to previous laws affecting employers. If you employ anyone working in California and have any questions regarding California employment law, please contact Harold Pinkley, Tara Presnell, Brad Harvey, Sara Anne Thomas, or your Miller & Martin Labor & Employment attorney.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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