

New California Employment Laws for 2012

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In 2011, the State of California passed a variety of new laws affecting California employers. If there is a theme to these enactments, it is to broaden legal protections for California employees. Here is a brief overview of some of the most significant new employment-related laws for 2012:

Independent Contractors. An employer's willful misclassification of employees as independent contractors will be punishable by new fines of \$5,000 to \$10,000 for each violation, or \$10,000 to \$25,000 for each violation if the Labor and Workforce Development Agency or a court determines there is pattern or practice of such violations. (SB 459)

Credit Checks. Employers will face new restrictions on using credit reports for employment purposes on employees or prospective employees. The new law restricts employers' use of credit reports to employees in managerial positions and positions involving regular access to sensitive consumer information, specified fiduciary responsibilities, and access to confidential or proprietary information. (AB 22)

Gender Expression. California's antidiscrimination laws have been amended to define "gender" to include gender identity and "gender expression." Employers must also revise dress codes to permit employees to appear or dress consistently with the employee's gender identity and gender expression. "Gender expression" is defined as a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. (AB 887)

Genetic Information. California's antidiscrimination laws have been amended to prohibit discrimination on the basis of genetic information. Genetic information is defined to mean information about genetic tests of an individual or an individual's family members, or the manifestation of a disease or disorder in an individual's family. (SB 559)

Commission Agreements. All contracts for employment involving commissions as a method of payment must be in writing, beginning January 1, 2013 (allowing employers all of 2012 to comply). The written agreement must state the method by which commissions will be computed and paid. (AB 1396)

Pregnancy Disability Leave. Employers with five or more employees must now maintain and pay for existing group health plan coverage for an eligible female employee who takes pregnancy disability. Employers must do so for the duration of the leave, up to four months in a twelve-month period. The employer can recover the premium from the employee if the employee fails to return from leave after four months unless the failure to return is for a reason other than taking a California Family Rights Act leave, the continuation, recurrence or onset of a health condition that entitles the employee to pregnancy disability leave, or other circumstances beyond the control of the employee. (AB 592)