

New Employment Laws For 2013

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Companies with employees in California should be aware of several new employment laws that are going into effect in 2013. Each of the following takes effect on January 1, 2013, unless otherwise indicated.

Limited Social Media Access: AB 1844 prohibits employers from asking or demanding that employees or job applicants provide their user names or passwords for social networking accounts. An employer may, however, request such access for an investigation into that employee's misconduct. And an employee may be required to provide such access for electronic devices provided by the employer.

Breastfeeding Discrimination: AB 2386 expands the definition of sex discrimination to include breastfeeding and related medical conditions. This change requires an update for the Discrimination and Harassment Notice required to be posted for employees by the California Department of Fair Employment and Housing.

Religious Dress and Grooming Discrimination: Under current laws, employers are required to reasonably accommodate bona fide religious beliefs and practices of its employees, unless doing so would present an undue hardship. AB 1964 expands this to include religious dress practices and grooming standards, including all forms of head, facial and body hair.

Inspection of Personnel Records: Currently, employers are required to maintain a copy of certain personnel records. AB 2674 makes the following changes: (1) employers must provide current or former employees with a copy of specified personnel records, whereas previously the file need have merely been made available for inspection; (2) the law now allows a request for a copy of the file to come from a "representative," as opposed to the employees themselves; (3) the copy must be provided within 30 days, extended to 35 days by mutual agreement; (4) employers must allow for oral requests for a copy of the file; (5) the law now requires retention of specified information for three years after an employee has been terminated; and (6) the law now permits the employer to designate a person to take such requests, and to redact the name of any non-supervisory employee identified in the file.

Penalty for Wage Statement Violations: Currently, the law allows for up to \$4,000 in penalties for "knowingly" failing to provide an employee with a wage statement containing specified information (identified in Labor Code 226(a)), if the failure results in "injury." These terms were not defined and led to a large number of class actions. SB 1255 seeks to define these terms, and states that injury occurs when the employee cannot promptly and easily determine from the wage statement alone the specified wage information. The law now provides that a knowing failure does not include isolated and unintentional payroll errors due to a clerical or inadvertent mistake. Further, the fact that an employer has a policy and procedure to ensure compliance may be considered in litigation to show that the error was not knowing.

Wage Statements For Temporary Employees: For temporary employees, AB 1744 adds to the list of items that must be on a wage statement: (1) the rate of pay for each temporary assignment during the pay period; and (2) the total hours worked for each legal entity to which the temporary worker as assigned. This law goes into effect on July 1, 2013.

Fixed Salaries for Nonexempt Employees: AB 2103 provides that payment of a fixed salary to a nonexempt employee will be deemed to be payment only for the employee's non-overtime hours, notwithstanding any private agreement to the contrary. This effectively overrules a California court of appeal decision from last year that allowed for such agreements.

Wage Garnishments: AB 1775 changes the amount of money that may be garnished to the lesser of 25% of the individual's weekly disposable earnings (i.e., the amount after tax withholdings) and the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage (as opposed to 30 times).

Written Commission Agreements: AB 1396 states that employers must have a written agreement with employees who are paid in whole or in party on a commission basis.