

Alerts & Publications

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Governor Brown Signs New California Legislation Affecting Employers

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In October 2011, California Governor Jerry Brown signed into law a number of bills affecting California employers. We have summarized below six of the recently-signed bills that we believe will have the most impact on California employers:

- **AB 887, “The Gender Nondiscrimination Act”:** AB 887 supplements California’s current anti-discrimination statutes to add “gender identity” and “gender expression” as new protected classes. The law extends employment, housing, and other civil rights protections to transgender persons who face discrimination based on their gender-related appearance or behavior—whether or not stereotypically associated with the person’s assigned sex at birth. For example, the law now requires employers to allow an employee “to appear or dress consistently with the employee’s gender expression.” The statute also expands the definition of a “hate crime” to cover any specified acts done to a person because of their gender expression or identity (as opposed to merely their gender or sex), and mandates that new employee handbooks and training must explicitly mention that California law does not tolerate any type of gender discrimination.
- **AB 1396, Written Commission Contracts:** AB 1396 mandates that all commission-based employment contracts (i.e., contracts that designate commissions as a method of payment for an employee’s services) be memorialized in a signed writing. This requirement would apply, for example, to a sales representative who is paid on a commission basis. The statute also requires employers to provide a signed copy of the

agreement to the employee and to obtain a signed acknowledgment of receipt from the employee.

- **AB 469, “Wage Theft Prevention Act of 2011”:** Starting January 1, 2012, AB 469 requires employers to provide each non-exempt, non-unionized employee, at the time of hiring, a notice specifying: (1) the rate and basis of the employee’s wages (e.g., hourly, salary, commission or otherwise); (2) any allowances claimed as part of the minimum wage (e.g., meal or lodging allowances); (3) the regular payday; (4) the employer’s name and any “doing business as” name(s) of the employer; (5) the physical address of the employer’s main office; (6) the employer’s telephone number; (7) the name, address, and telephone number of the employer’s workers’ compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary. Employers must also provide written notification of any changes in the above information within seven calendar days of the change. An employer can satisfy this requirement if any such changes are reflected in timely wage statements. AB 469 also expands the penalties available for various wage-and-hour Labor Code violations, and expands the time an employer is required to maintain payroll records from two to three years.
- **SB 459, Penalties for Willful Independent Contractor Misclassification:** SB 459 prohibits employers from willfully misclassifying employees as independent contractors. The statute also prohibits third parties from knowingly advising employers to treat individuals as independent contractors in order to avoid employee status (although it exempts attorneys who provide legal advice). Employers who violate this law are subject to civil penalties, and non-exempt third parties who advise employers to engage in any such unlawful conduct are subject to joint and several liability.
- **AB 22, Prohibition Against Using Credit Checks for Employment Purposes:** AB 22 generally prohibits employers from using consumer credit reports for employment purposes, except where the position of the person for whom the report is sought: (1) is managerial; (2) involves regular access to specified personal information for any purpose other than routine solicitation and processing of credit cards; (3) is a position for which information contained in the report must be disclosed by law; (4) involves access to confidential or proprietary information, including trade secrets; or (5) involves regular access to US\$10,000 or more of cash owned by the employer, a customer or a client. The law does not apply to persons holding positions in the California Department of Justice or law enforcement agencies. Certain financial institutions are also exempt.
- **SB 299, Pregnancy and Medical Leave Protections:** SB 299 requires employers to continue to pay their regular contribution toward a female employee’s group health plan coverage while the employee is on leave due to pregnancy or a related medical condition, for up to four months during a 12-month period (an increase from the previous requirement of three months). The employee also will be required to pay her regular

contribution toward her benefits during that time. The employer is required to provide coverage at the same level it would have provided had the employee continued in her regular employment during the duration of the leave.

In early 2012, please look for our more comprehensive analysis of these and other relevant new laws in our written annual update, and for an invitation to live presentations covering these and other developments.

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