

IMPORTANT NEW CALIFORNIA EMPLOYMENT LAWS

As the 2011 California legislative session drew to a close, Governor Jerry Brown signed several new significant employment laws – by far the most enacted in any of the last several years. Some of these new laws require employers to take specific proactive steps to ensure compliance. The purpose of this alert is to address what we consider to be the most important of these new laws for our clients and contacts.

Here are what we consider to be the most important new developments:

- **Mandatory Written Notice to New Hires/Employees:** Effective January 1, 2012, at the time of hiring an employee, an employer must provide a written notice to the employee with all of the following information: (a) the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including rates for overtime, as applicable; (b) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (c) the regular payday designated by the employer in accordance with the Labor Code requirements; (d) the name of the employer, including any “doing business as” names used by the employer; (e) the physical address of the employer’s main office or principal place of business, and a mailing address, if different; (f) the employer’s telephone number; (g) the name, address, and telephone number of the employer’s workers’ compensation insurance carrier; (h) “Any other information the Labor Commissioner deems material and necessary.” The law also requires employers to provide written notice to existing employees within 7 calendar days of any changes to the foregoing (unless the change is reflected in a timely wage statement that complies with California law, or notice is provided in another writing required by law within 7 calendar days). The California Labor Commissioner’s web site currently indicates that, by mid-December, it will post online a template that employers may use to comply with these requirements, along with additional guidance:
http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html

We recommend that employers start preparing now to be able to meet these requirements by January 1, 2012.

- **Pregnancy Disability Leave:** Effective January 1, 2012, Senate Bill 299 requires an employer to maintain and pay for coverage of employees on pregnancy disability leave under group health plans. Under prior law, such coverage continuation was required only if the pregnancy disability leave coincided with FMLA leave (and if FMLA was not implicated, the employee could be required to continue coverage under COBRA). This change is significant because pregnancy disability leave may continue up to a maximum of 4 months (whereas FMLA is a maximum of 12 weeks for pregnancy disability), and employers must provide pregnancy disability leave to employees regardless of whether they qualify for FMLA leave (e.g., an employee may qualify for pregnancy disability leave regardless of whether the employee is at a worksite with 50 or more employees within a 75 mile radius, and regardless of whether the employee has been employed for 12 months or worked 1,250 hours within the last 12 months). Employers should review and update their leave of absence policies, and also the language in the “notice of rights and responsibilities” and other standard written correspondence to employees on pregnancy disability leave, to reflect this change in the law. In addition to affecting the leave rights of employees starting leave after January 1, 2012, this law affects the rights of employees starting leave prior to and continuing after January 1, 2012 (as to the portion of their leave after the beginning of the year).

- Clarification of Organ/Bone Marrow Donation Leave Law:** Senate Bill 272 made some important clarifications to the Organ/Bone Marrow Donation leave law that took effect January 1, 2011, including that: (a) the 30 days of paid leave for organ donation, and 5 days paid leave for bone marrow donation, refers to business days; (b) the one-year period for measuring exhaustion of leave is measured from the date the employee's leave begins and consists of 12 consecutive months; (c) the law's original provisions regarding vacation and sick time also apply to paid time off (with respect to donor leave not being considered a break in service under such policies, and the employer's right to require the employee to use up to 2 weeks of such accrued paid time for organ donation and 5 days for bone marrow donation). Employers should review their leave policies and employee notices/correspondence to ensure compliance with the foregoing.
- "Contractor" Status:** The legal ramifications for misclassifying a worker as a "contractor" were already substantial, and Senate Bill 459 makes them much worse. Under this new law, employers may be held liable for a civil penalty of \$5,000 to \$15,000 per misclassification. For a pattern or practice of (i.e., multiple or many) misclassifications, the civil penalty is \$10,000 to \$25,000 per violation. Businesses found in violation will also be required to publicize information about their violations prominently on their business web site (or if the business has no web site, another prominent place visible to the employees and the general public). Senate Bill 459 makes it more imperative than ever for businesses to review the propriety of any and all classifications of workers as "contractors," and to take appropriate actions to correct misclassifications.
- Credit Reports:** Assembly Bill 22 prohibits an employer, or potential employer, from using a consumer credit report for employment purposes (e.g., making a hiring or termination decision) unless the employment position in question is: (a) a managerial position; (b) one that the law requires obtaining or disclosing information in the report; (c) one that involves regular access to bank/credit card account information, social security number, and date of birth (access must be to all of the foregoing types of information; however, routine solicitation and processing of credit card applications in a retail establishment does not qualify); (d) one where the employee is or would be a named signatory on the employer's bank or credit card account, authorized to transfer the employer's money, or authorized to enter financial contracts for the employer; (e) one that involves access to certain confidential or proprietary information defined by the law; or, (f) one that involves regular access to cash of \$10,000 or more of the employer or customer/client during the workday. Employers should review their background check policies and practices to ensure compliance.
- Commission Contracts:** Assembly Bill 1396 requires that, as of January 1, 2013, whenever an employer enters into an agreement with an employee involving payment of commissions, there must be a written (and signed) contract that sets forth the method by which the commissions shall be computed and paid. The law provides that the term "commission" does not include short-term productivity bonuses paid to retail clerks, or profit-sharing plans (unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed). In light of the commonality of employee disputes involving commissions, it has always been best practice to have documented, signed commission arrangements. We strongly recommend that employers review their commission arrangements now to ensure compliance, rather than waiting until the requirement becomes mandatory on January 1, 2013.
- (Federal Law-Nationwide) New NLRA Posting Requirement:** The National Labor Relations Board (NLRB) has enacted a rule that requires most private-sector employers to display a posting of employee rights under the National Labor Relations Act by no later than January 31, 2012. Because this is a federal law, it applies across the country (i.e., not just in California). The posting can be downloaded from the NLRB website and printed in color or black-and-white (<https://www.nlrb.gov/poster>), and is also available at no charge from NLRB regional offices (<https://www.nlrb.gov/who-we-are/regional>).

[offices](#)). Translated versions are available, and are mandatory at workplaces where at least 20% of employees are not proficient in English.

Given the substantial liabilities that could ensue from non-compliance with any of the above new laws, businesses should work with employment law counsel to review existing policies and practices for compliance and to implement related changes that are needed.

Save The Date—2012 Employment Law Update Seminar: You will receive from us soon (within the next several days) an invitation to our 2012 Employment Law Update Seminar, where we will review these and several other recent employment law developments. The seminar will be held in Santa Clara, CA at the Biltmore Hotel on January 25, 2012, and in San Diego at the offices of GreatCall, Inc., on January 31, 2012. Check-in/lunch will start at 11:30 a.m., and the presentation will be from noon to 2:00 p.m., at both locations. Clients of our firm and clients of the seminar's co-sponsor Liberty Benefits may register free of charge. The registration fee for non-clients will be \$50. Registration instructions and payment information will be included in the invitation.



4655 Old Ironsides Drive, Suite 420 | Santa Clara, CA 95054

“Big firm sophistication. Small firm personal service and efficiency.”

Raymond H. Hixson
rhixson@hixsonnagatani.com
408-486-9977

Brian K. Nagatani
bnagatani@hixsonnagatani.com
408-486-9988

Mary Wang
mwang@hixsonnagatani.com
408-486-9933

To unsubscribe from our distribution list, please reply to this message and indicate “unsubscribe.” If this client alert has been forwarded to you, and you would like to be added to our distribution list, please e-mail your request to hixsonnagatani@hixsonnagatani.com.

This client alert is meant to assist in a general understanding of current law. It is not legal advice. Companies or individuals with particular questions should seek advice of counsel.