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Employment Law Bulletin

November 2017

It's hard to believe, but it's time to report on new employment laws that will take effect in 2018. This issue and our December newsletter will let you know what you need to do to remain in compliance. Be sure to contact the employment attorneys at SMT if you have questions.

New Parent Leave Law for Employers of 20-49 Employees

Effective January 1, California employers of 20-49 employees must provide up to 12 workweeks of leave to new mothers and fathers within the first year of a child's birth, adoption or foster care placement. Eligible employees include those who:

- have completed 12 months of service with the employer;
- worked at least 1250 hours during the 12 month period before the leave is to begin; and
- work at a location where the employer has at least 20 employees within a 75 mile radius.

For mothers of newborns, new parent leave can be added to the pregnancy/childbirth-related disability leave following the child's birth.

If the employee is on the employer's group health plan, the employer must continue to pay its share of the coverage during the leave. The employer must also guarantee the employee's reinstatement to the same or a comparable position when the parent leave is over.

New parent leave is unpaid, but employees may use accrued sick leave, vacation and

other paid time off. They can also apply for paid family leave insurance benefits through the California Employment Development Department.

The new law does not affect employers of 50 or more employees who are already required to provide leave to new parents under the California Family Rights Act and the federal Family Medical Leave Act.

Contact an SMT employment attorney if you'd like help setting up your new parent leave program.

New Ban the Box Legislation – Eliminate Those Pre-Job Offer Criminal History Questions

Starting January 2018, California employers of 5 or more employees may not request information about an applicant's criminal convictions until after a conditional job offer has been made. Although coined as "Ban the Box" legislation, the new law requires more than the simple elimination of the conviction history check box commonly seen on job applications. Employers may still conduct background checks after making a conditional job offer, but the onerous requirements the new law places on employers who want to use the background check results to reject an applicant may cause many employers to think twice about conducting the check in the first place.

Here are the steps an employer must take if it discovers conviction information that either *solely or in part* results in the denial of employment:

- The employer must conduct an individual assessment that evaluates whether the conviction has a "direct and adverse relationship with the specific duties of the job that justify denying the applicant the position." In conducting this assessment, the employer must consider the nature and gravity of the criminal offense, the time that has passed since the offense and the completion of the sentence, and the nature of the job sought.
- If the employer still wants to reject the applicant, the employer must provide written notice to the applicant that: 1) identifies the conviction at issue, 2) includes a copy of any conviction history report, 3) explains the applicant's right to respond to the notice before the employer's decision becomes final, 4) states the deadline for the response, and 5) tells the applicant that the response may include evidence challenging the accuracy of the conviction history and evidence of rehabilitation or mitigating circumstances. The applicant then has five days to respond to the notice and an additional five days if the applicant disputes the accuracy of the information to provide documentation supporting the claim.
- If, after consideration of the new information, the employer still wants to deny employment, the employer must give a second notice that includes: 1) the final denial or disqualification, 2) any existing procedure the employer has to challenge the decision or request reconsideration, and 3) the right to file a complaint with the Department of Fair Employment and Housing.

Given the tedious rejection process employers now must follow before acting on a negative background check, employers should evaluate whether background checks are truly a necessary component to their hiring process for the position in question. In the meantime, be sure to revise your employment applications and interview protocols to avoid a violation

of this new legislation.

If your job application or hiring policies need updating to reflect this new legislation, please don't hesitate to contact us.

No Se Habla Español?

SMT's employment attorneys can provide your company with employment policies, forms and employee disciplinary documentation in Spanish. Providing such important information to employees in the language they understand is critical to employee performance, providing a welcoming diverse work environment, and protecting your company against employment claims. Contact an SMT attorney today to get started.

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