

2012 Employment Law Update

January 2012

As we begin the New Year, Spaulding McCullough & Tansil LLP sends this important notice of new employment laws that took effect January 1, 2012. Governor Jerry Brown signed several employment-related bills in 2011, many of which apply to employers of all sizes and will require employers to update their policies and procedures. Here's a list:

- **Employer Information and Pay Rate Notice.** Requires employers to provide new employees written notice of rates of pay, payday and employer information upon hire, and notice of changes to existing employees.
- **Employers to Maintain/Pay for Health Insurance for Employees on Pregnancy Disability Leave.** Requires employers of five or more employees to continue and pay for group health insurance for employees disabled by pregnancy or childbirth for the duration of the disability leave, up to a maximum of four months.
- **New Posting Requirement.** Requires most private sector employers to post a notice of employee rights under the National Labor Relations Act at their worksites (effective April 30, 2012).



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- **New Protections Against Gender Identity/Expression Discrimination.** Prohibits discrimination against employees based on their gender identity or gender expression. An employee must be permitted to appear or dress consistently with his/her gender expression.
- **New Protections Against Use of Employee Genetic Information.** Prohibits employers from requesting, using or discriminating against employees based on genetic information of the employee or his/her family members.
- **Use of Employee Credit Reports.** Limits an employer's/prospective employer's use of an employee's/applicant's credit report for employment purposes.

- **Liquidated Damages in Minimum Wage Litigation.** Permits employees who weren't paid minimum wage to recover two times the unpaid wages in a complaint brought before the Labor Commissioner.
- **Recordkeeping Requirements.** Increases the period of time California employers must keep pay and wage records from two years to three years.
- **Employee Records of Hours Worked.** Provides that employers cannot prohibit employees from keeping their own personal record of hours worked or piece-rate units earned.
- **Misclassification of Employees as Independent Contractors.** Imposes new penalties of up to \$25,000 per violation on employers who voluntarily and knowingly misclassify an employee as an independent contractor.
- **Same-Sex Partner/Domestic Partner Benefits.** Requires businesses with contracts for more than \$100,000 with the State of California to provide equal benefits for an employee's same-sex spouse or registered domestic partner.
- **Changes to Organ/Bone Marrow Donor Paid Leave.** Paid leave periods for organ donor leave (30 days) and bone marrow leave (five days) are measured in business days. Also requires employers to maintain and pay for health insurance during the leave.

- **New San Francisco Minimum Wage.** The minimum wage for employees who work two or more hours per week in San Francisco increases from \$9.92 to \$10.24 per hour.
- **Changes to San Francisco Health Care Mandate.** The Health Care Mandate requires employers to spend a specified minimum amount toward certain health care expenses for employees working in San Francisco. Changes to the ordinance impose additional compliance requirements on employers.

Looking down the road to 2013, employers who pay employees on a commission basis should know that effective January 1, 2013, a new law will require employers to enter into written agreements with commissioned employees. Such agreements must explain how commissions are calculated and paid. Because of the many problems associated with verbal commission agreements, we recommend that these written agreements be put in place now, without waiting until 2013.

If you have questions or would like assistance in bringing your business into compliance with these new laws, please contact Spaulding McCullough & Tansil employment attorneys Jan Gabrielson Tansil (tansil@smlaw.com) or Lisa Ann Hilario (hilario@smlaw.com) at 707-524-1900.

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