



Employment Law Bulletin

February 2018

In this month's Employment Law Bulletin we bring you our 2018 Employment Law Update Action Items checklist. Employers can use this handy checklist to help ensure their organization is in compliance with new laws that took effect in January 2018. It also includes action items regarding some of the issues we most frequently counseled our clients about during 2017. (See the checklist starting with "Wage Statements.") Please reach out to an SMT employment attorney if you have questions. We are here to help.

2018 EMPLOYMENT LAW UPDATE ACTION ITEMS

REQUIRED LABOR LAW POSTINGS:

- Update CA Labor Law Poster

NEW PROHIBITION AGAINST SALARY INQUIRIES IN HIRING PROCESS:

- Review employment applications, interview and pre-screening practices to remove any inquiries about salary history
- Train interviewers not to request salary history information
- Document any voluntary salary history disclosures
- Train decision makers not to consider salary history in making hiring decisions (if applicant voluntarily disclosed salary history)
- Prepare pay scales for each job opening and provide to applicant if requested
- Amend contracts with third-party vendors, such as recruiters, to require them to comply with the new law

CALIFORNIA EQUAL PAY ACT:

- Perform audits to ensure that there is a bona fide reason for disparity in pay amongst EEs doing the same or substantially similar work
- Create a list of all bona fide factors that apply to your business and the position in question
- Establish a protocol for documenting that only bona fide factors were considered when setting pay
- Keep records of wages and wage rates, job classifications and other terms and conditions of employment

BAN THE BOX LEGISLATION:

- Review employment applications and all pre-offer documents to eliminate requests for criminal history information
- Train interviewers not to request criminal history information
- If a criminal background check will be done, revise sample offer letters to provide job offers are conditioned on successful completion of a criminal background check
- Don't have applicants sign criminal background check authorization forms until after the conditional job offer has been made – check to make sure your background check company is in compliance
- If you want to withdraw a job offer based on background check results, consult legal counsel first

NOTICE OF RIGHTS OF DOMESTIC VIOLENCE VICTIMS:

- Give written Notice of Domestic Violence Victim Rights to all new EEs (add to new hire checklist if you have one)
- Give written Notice of Domestic Violence Victim Rights to current EEs (upon request)

NEW PROTECTIONS FOR UNDOCUMENTED WORKERS:

- Clearly identify public and nonpublic areas
- Train EEs who are likely to greet immigration officials when they come onto the property to notify a point person
- Train the “point person” how to deal with immigration officials and not to permit them to go into nonpublic areas
- Train the “point person” regarding the Notice of Inspection procedures and issue to EE
- Check the DLSE website at www.dlse.ca.gov on 7/1/2018 for their template posting and post

I-9 FORMS:

- Make sure you are using the July 2017 I-9 form
- Become familiar with I-9 Instructions; train appropriate staff
- Take care not to use eligibility information or processes for the wrong reason

CALIFORNIA NEW PARENT LEAVE (ERs of 20 or more EEs):

- Add a new parent leave policy to your employee handbook
- If you offered your own form of parent leave, revise your policy to make sure it complies with the law
- Train HR and supervisors regarding new parent leave requirements and how to provide notice to eligible EEs

- Make sure payroll department understands how to integrate payment of sick/vacation/PTO with PFLI benefits

NEW HARASSMENT PREVENTION REQUIREMENTS:

- Distribute new DFEH Sexual Harassment pamphlet to all EEs
- Review and revise sexual harassment policy to comply with the new requirements
- Post “Transgender Rights in the Workplace” posting

NEW HARASSMENT PREVENTION TRAINING REQUIREMENTS (ERs of 50 or more EEs):

- Ensure new EEs hired, and existing EEs promoted, into supervisory positions receive training within 6 months and every 2 years thereafter
- Track attendance and maintain proof of training
- Ensure trainings cover the new requirements

MINIMUM WAGE IN CALIFORNIA:

- Review hourly pay rates and increase as needed
- Review pay for EEs where minimum wage is used as a threshold and increase as needed:
 - Exempt EE salaries
 - Wage Order 16 EEs who provide their own hand tools/equipment
 - EEs paid minimum wage for travel, waiting time, etc.
 - Commissioned sales people (to maintain overtime-exempt status)
 - EEs in the construction industry exempt from paid sick leave law based on CBA that provides for pay at least 30% > minimum wage
 - EEs exempt from state overtime law based on CBA that provides for regular hourly pay at least 30% > minimum wage
- Review exempt EE salaries and increase as needed
- Since the new minimum wage laws are triggered by ER size, pay attention to fluctuation in EE counts throughout the year and adjust the minimum wage accordingly
- Make sure you have the current minimum wage posting (the 2016 posting is still good)

OVERTIME FOR AGRICULTURAL WORKERS:

- Changes are not effective until 1/1/2019 at the earliest (depending on ER size), but now is a good time to review what overtime exposure will be and to develop plans to address (limiting overtime exposure by hiring more EEs vs. keeping the same number of EEs who work more hours and are owed overtime)
- Since the new overtime law is triggered by ER size, pay attention to fluctuation in EE counts to be sure to apply the correct overtime rule

IRS MILEAGE RATE FOR 2018:

- Pay the IRS mileage rate
- If not paying IRS rate, ensure your mileage rate truly covers the cost incurred by the EE

MARIJUANA IN THE WORKPLACE:

- Decide what policy best fits your organization
- Train supervisors and management to recognize signs of intoxication
- Review and revise
 - Pre-employment procedures
 - Fitness For Duty Policies
 - “Off Duty” Definition
 - Rehabilitation leave

WAGE STATEMENTS (PAY STUBS):

- Review pay stubs for exempt and nonexempt EEs to ensure they contain all required

THIRD PARTY PAYROLL ASSISTANCE:

- Review pay stubs for exempt and nonexempt EEs to ensure they contain all required Information (see above)
- If you have nonexempt EEs who earn an hourly wage plus commissions, incentives, bonuses or other compensation, consider an audit with legal counsel to ensure you are including these in calculated the OT rate of pay
- Audit time and payroll records to ensure the person reporting hours to the payroll company is providing the correct information

ELECTRONIC TIMEKEEPING:

- Review timekeeping procedures and implement policies and procedures instructing EEs what they should do if their time is not properly recorded
- Do not allow managers/supervisors/payroll to revise EE time entries without EE’s written consent
- Keep written evidence of all EE-approved time record changes in the EE’s payroll file

BYOD:

- Check and update policies and practices for reimbursement of cell phone/device expenses
- Check and update policies and practices for after-hours work by non-exempts
- Train supervisors about after-hours expectations and requirements
- Check confidentiality policies and agreements regarding ownership and use of ER information
- Train supervisors/managers/owners not to text with EEs about anything that could
 - create liability
 - result in disciplinary action for any EE
 - embarrass them in front of a jury

TRAVEL TIME ISSUES

- Clearly spell out when travel time is commute vs. working hours
- Check and update policies and practices for reimbursement of travel expenses
- Think through and document any policies, practices and documentation when using a special travel rate of pay

CAREGIVER EE ISSUES

- Be sure to have a written agreement and job description
- Address overnight and live-in issues
- Clearly address any on-call time
- Don't become a landlord unintentionally
- Keep time records and true payroll records
- Pay wages like an ER

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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