



Employment LAW BULLETIN

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NEW EMPLOYMENT LAWS

The California Legislature and Governor Davis have been busy. Summarized below are some key new employment laws affecting California businesses.

REDUCTIONS IN FORCE (AB 2957)

California has established its own version of the federal Worker Adjustment and Retraining Notification Act, commonly known as the "WARN Act." Like the federal WARN Act, California's version requires that certain employers provide notice to employees and specified government agencies before they conduct a "mass-layoff," "relocation" or "termination." However, employers must be aware that California's version differs substantially from the federal version, potentially giving employees greater rights and covering more employers. For example, the federal WARN Act applies to employers that employ 100 or more employees and California's version applies to any industrial or commercial facility that employ 75 or more persons. In addition, under the "mass-layoff" section, the federal WARN Act applies only if the number of affected employees equals 50 or more and constitutes 1/3 of the employees at the affected worksite in any 30 or 90 day period. In contrast, California's version applies if 50 or more employees at a covered location are affected in any 30 day period, regardless of whether it constitutes 1/3 of the workforce at the affected site. (The new law is effective on January 1, 2003.)

**DISCLOSING WAGES OR
WORKING CONDITIONS
(AB 2895)**

Assembly Bill 2895 stops employers from prohibiting employees from disclosing information about their wages or working conditions. It specifically prohibits employers from discharging, disciplining, or discriminating against employees who disclose information about their wages or information about the employer's working conditions. It also prohibits employers from requiring an employee to sign a waiver that purports to deny the employee the right to disclose information about his or her wages or information about the employer's working conditions. Fortunately, the law specifically states that it is not intended to permit an employee to disclose proprietary information, trade secret information or information that is otherwise subject to a legal privilege without the consent of the employer. (The new law is effective on January 1, 2003.)

**PENALTY FOR
FAILURE TO REPORT
SERIOUS OCCUPATIONAL
INJURY (AB 2837)**

Assembly Bill 2837 imposes a civil penalty of not less than \$5,000 on employers who do not immediately report an employee's serious occupational injury or illness, or death to the Division of Occupational Safety and Health by telephone or telegraph.

In addition, the new law establishes potential criminal and civil penalties against every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment or place of employment, who violates any other reporting requirements of this new law. The penalties range from up to \$15,000 for individuals and up to \$150,000 for corporations or limited liability companies depending on the nature and severity of the violation. Prison time is also allowed. (The new law is effective on January 1, 2003.)

**BACKGROUND CHECKS
(AB 1068 and AB 2868)**

Assembly Bills 1068 and 2868 amends existing laws relating to investigative consumer reporting agencies and consumer credit reporting agencies and make clarifying changes to last year's legislation. The amendments include:

- (1) requiring a "check the box" form where the consumer can waive or elect to receive a copy of any investigative consumer report;
- (2) adding "misconduct" to the exception that any investigative report must be disclosed to the subject of the investigation;
- (3) decreasing the length of time from three years to two years that an investigative consumer report must be made available to the consumer; and
- (4) repealing the requirement that employers provide the results of internal background investigations to employees and applicants except for public record information.

(These laws take effect immediately as urgency legislation.)

**PAID FAMILY LEAVE -
WHO PAYS?
(SB 1661)**

Senate Bill 1661 establishes a paid family medical leave program for all workers. The leave program is *established, administered and funded through the State Disability Insurance (SDI) program*. The benefit is fully funded through contributions by the employee.

Here's how it works: Within the state disability insurance program, a family temporary disability insurance program is funded by means of workers' regular SDI deductions. This program will provide up to 6 weeks (in a 12 month period) of partial wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

The benefit would be the same amount - 55% of a worker's wages up to \$728 per week - as the normal State Disability Insurance (SDI) benefit for the worker's own disability. (The maximum benefit will increase over the next two years as it is indexed to the workers' compensation benefit.) All employees currently covered under California's SDI plan will be eligible for the program.

Key provisions of the bill include:

- A one-week waiting period before workers can apply for the program.
- Employers can require employees to use up to two weeks of unused vacation time before receiving paid leave.
- Payments are capped at six weeks over a 12-month period and at 55 percent of wages, up to an annually-adjusted maximum.
- As in the original federal and state Family Leave laws, small businesses with less than 50 employees are not required to hold a job open for a worker on leave. However, employees of small businesses are still eligible for payments from the state.

SB 1661 *does not go into effect until January 1, 2004*, with the benefits applying to leaves beginning on or after July 1, 2004.

**ACCESS TO PAYROLL
RECORDS (AB 2412)**

Assembly Bill 2412 imposes penalties when an employer fails to provide employees with access to their payroll records as required by Labor Code Section 226. Assembly Bill 2412 requires employers to provide employees with the opportunity to inspect or copy their payroll records within twenty-one (21) days of a request. An employer who fails to make payroll records so available will be assessed a \$750 penalty. Further, an employee may bring an action for injunctive relief to ensure compliance and is entitled to an award of costs and reasonable attorney's fees. (The new law is effective on January 1, 2003.)

**SICK LEAVE PROTECTION
(SB 1471)**

Senate Bill 1471 prohibits employers from using absence control policies which discipline employees for using sick leave to attend to the illness of a child, parent, spouse or domestic partner if the sick leave falls within the protection of Labor Code Section 233. Labor Code Section 233 permits employees to use up to one-half of their accrued sick leave to attend to the illness of a child, parent, spouse or domestic partner. (The new law is effective on January 1, 2003.)

AGE DISCRIMINATION (AB 1599)

Assembly Bill 1599 rejects the decision in *Esberg v. Union Oil Company of California*, wherein the court held that California law does not prohibit an employer from considering age when making determinations pertaining to the terms, conditions or privileges of employment. Assembly Bill 1599 repeals Government Code Section 12941 and adds age to the classifications protected under Government Code Section 12940. (The new law is effective on January 1, 2003.)

LABEL YOUR TRADE SECRETS, OR LOSE THEM

Although most companies cherish their trade secrets, many fail to take a simple step to protect them: labeling (designating) them as trade secrets.

California law sets out a two fold test for determining if something is a trade secret. First, the information must have independent economic value by not being generally known to the public or to others who can gain from its disclosure. Second, reasonable efforts must be taken by the company to keep the information secret.

What are reasonable efforts to protect trade secrets vary, depending upon the circumstances. But at a minimum, you must designate trade secrets as trade secrets, e.g. marking them "confidential." In addition, companies should develop policies regarding designating information as confidential to insure consistent and selective designation.

Powerful remedies are available through the litigation process to companies whose trade secrets are misused or taken. But, if a court finds that your company failed to protect its information, you may be out of luck.

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