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The Only Constant in Life=Change
Year In Review Legal Updates

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CALIFORNIA PAID SICK LEAVE LAW

AKA HEALTHY FAMILIES HEALTHY WORKPLACE ACT

New Paid Sick Leave Law

- January 1 requirements:
  - Posters
  - Update Labor Code 2810.5 notice for new hires
- July 1 requirements:
  - Accrual begins
  - Written notice complete
  - Wage statement tracking
- July 13 amendments

Display Poster—Jan. 1, 2015

Department of Industrial Relations
STATE OF CALIFORNIA

Division of Labor Standards Enforcement - Office of the Labor Commissioner

THIS POSTER MUST BE DISPLAYED WHERE EMPLOYEES CAN EASILY READ IT
(re-publication of poster may exclude pictures but must include subsequent title and text which is mandatory)

HEALTHY WORKPLACES/HEALTHY FAMILIES ACT OF 2014
PAID SICK LEAVE

Entitlement:

- An employee who, on or after July 1, 2015, works in California for 30 or more days within a year from the beginning of employment is entitled to paid sick leave.
- Paid sick leave accrues at the rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. Accrual shall begin on the first day of employment or July 1, 2015, whichever is later.
- Accrued paid sick leave shall carry over to the following year of employment and may be capped at 48 hours or 6 days. However, subject to specified conditions, if an employer has a paid sick leave, paid leave or paid time off policy (PTO) that provides no less than 24 hours or three days of paid leave or paid time off, no accrual or carry over is required if the full amount of leave is received at the beginning of each year in accordance with the policy.

Usage:

- An employee may use accrued paid sick days beginning on the 90th day of employment.
- An employer shall provide paid sick days upon the oral or written request of an employee for themselves or a family member for the diagnosis, care or treatment of an existing health condition or preventive care, or specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking.
- An employer may limit the use of paid sick days to 24 hours or three days in each year of employment.

Retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited. An employee can file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

For additional information, you may contact your employer or the local office of the Labor Commissioner. Locate the office by looking at the list of offices on our website http://www.dir.ca.gov/dlse/DistrictOffices.htm using the alphabetical listing of cities, locations, and communities. Staff is available in person and by telephone.

Poster available online:
http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(12_2014).pdf

Notice to New Hires—Jan. 1, 2015

NOTICE TO EMPLOYEE
Labor Code section 2810.5

EMPLOYEE

Employee Name: _____

Start Date: _____

EMPLOYER

Legal Name of Hiring Employer: _____

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? ☐ Yes ☐ No

Other Names Hiring Employer is "doing business as" (if applicable):

_____

Physical Address of Hiring Employer's Main Office:

_____

Hiring Employer's Mailing Address (if different than above):

_____

Hiring Employer's Telephone Number: _____

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): ☐ Hour ☐ Shift ☐ Day ☐ Week ☐ Salary ☐ Piece rate ☐ Commission

☐ Other (provide specifics): _____

Does a written agreement exist providing the rate(s) of pay? (check box) ☐ Yes ☐ No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? ☐ Yes ☐ No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):

_____

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: _____

WORKERS' COMPENSATION

Insurance Carrier's Name: _____

Address: _____

Telephone Number: _____

Policy No.: _____

☐ Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: _____

PAID SICK LEAVE

Unless exempt, the employee identified on this notice is entitled to minimum requirements for paid sick leave under state law which provides that an employee:

a. May accrue paid sick leave and may request and use up to 3 days or 24 hours of accrued paid sick leave per year;
b. May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
c. Has the right to file a complaint against an employer who retaliates or discriminates against an employee for
   1. requesting or using accrued sick days;
   2. attempting to exercise the right to use accrued paid sick days;
   3. filing a complaint or alleging a violation of Article 1.5 section 245 et seq. of the California Labor Code;
   4. cooperating in an investigation or prosecution of an alleged violation of this Article or opposing any policy or practice or act that is prohibited by Article 1.5 section 245 et seq. of the California Labor Code.

The following applies to the employee identified on this notice: *(Check one box)*

☐ 1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave.
☐ 2. Accrues paid sick leave pursuant to the employer's policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246.
☐ 3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period.
☐ 4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption):_____

ACKNOWLEDGEMENT OF RECEIPT
(*Optional*)

_____ (PRINT NAME of Employer representative)	_____ (PRINT NAME of Employee)
_____ (SIGNATURE of Employer Representative)	_____ (SIGNATURE of Employee)
_____ (Date)	_____ (Date)

The employee's signature on this notice merely constitutes acknowledgement of receipt.

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.

DLSE-NTE (rev 9/2014)

New Paid Sick Leave Law—The Basics

- Effective 7/1/15, employees working in CA for 30 or more days per year entitled to paid sick leave
- Applies to temporary, part-time and full-time employees (includes interns)
- Minimum accrual is **one hour per every 30 hours worked**; can be capped at 24 hours or 3 days/year
- Alternative to accrual is lump sum method: can provide 24 hours at the beginning of each calendar year, anniversary date, or other 12 month basis
- Sick leave need not be paid out at termination
- If an employee is rehired within one year, previously accrued and unused paid sick days must be reinstated
- Monetary penalties for noncompliance

Paid Sick Leave—Already Have A Policy?

- Notice
  - Written notice required that shows paid sick leave accrued and available to employee
- Consider ways to mitigate cost
  - Combined PTO
  - Lump-sum method

Paid Sick Leave – Accrual Method

- Accrual Method
  - Employees must accrue at least 1 hour of PSL for every 30 hours worked
    - Exempt employees assume a 40-hour workweek for accrual purposes
  - Employers may cap usage at 3 days or 24 hours (whichever is greater) every 12 months
  - Employers may cap accrual at 6 days or 48 hours (unless in SF or OAK) every 12 months
  - Employers must carry over unused sick leave to the following 12 months

Paid Sick Leave – Lump Sum Method

- Lump Sum Method
  - Employers may provide employees with 3 days/24 hours in lump sum every 12 months
  - Employer are not required to carry over unused PSL
  - Employers do not need to track accrual
  - No requirement to reinstate accrued balances if employees receive PSL on start date
  - Mitigates cost of prolonged paid sick leave; allows for better budget predictability

Rebuttable Presumption

- Protection from retaliation for using sick leave, filing complaint, alleging violation of rights, cooperating in investigation or opposing policy/practice prohibited by law
- **Rebuttable presumption of unlawful retaliation** if employer takes adverse action against employee **within 30 days** of employee's request for or use of leave
  - What about employees who take sick leave when faced with disciplinary action?

Tracking/Record Keeping

- Retain all records documenting hours worked and paid sick days accrued and used by each employee for three years
- Provide employees with written notice on pay day that sets forth the amount of paid sick leave available to the employee
- Failure to maintain or retain adequate records creates a rebuttable presumption that the employer violated the law

Paid Sick Leave Limited to California? No.

- Similar statutes cropping up throughout the U.S.
- Non-California employees are entitled to accrue sick days at the same rate as California employees, if they work 30 or more days in California within a year
- **Cities.** Led by San Francisco, at least 16 cities, including New York City and Washington, D.C., have implemented their own sick leave laws
- **States**. Connecticut was the first, quickly followed by California and Massachusetts (requires 40 hours rather than 24). Proposed legislation in New Jersey, Maryland, Oregon and Washington
- **Feds.** Not yet, but maybe on the horizon

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Amendments to Paid Sick Leave

Amendments to Paid Sick Leave

AB 1522: Healthy Workplaces, Healthy Families Act of 2014

- On July 13, 2015, AB 304 emergency legislation was enacted to allegedly "clarify" AB 1522
- However, AB 304 does not merely clarify AB 1522
- It changes the existing law, which was extremely confusing, and still is…

Amendments to Paid Sick Leave

New Definition of Employee

- A covered employee is now someone who works in California “for the same employer” for 30 or more days within a year

Amendments to Paid Sick Leave

Alternative Accrual Method

- Employers may now provide paid sick leave on a basis other than 1 hour for every 30 hours worked
- Accrual can now be (1) on a regular basis, so that (2) employees will have at least 24 hours of accrued paid sick leave by the 120th calendar day of employment
- Allows more flexibility as to how employees can accrue paid sick leave

Amendments to Paid Sick Leave

Limiting Paid Sick Days

- Under the original statute, an employee was entitled to use accrued paid sick days beginning on the 90th day of employment, but an employer could limit the employee's use of paid sick days to 24 hours or 3 days in each year of employment
- Under the amended law, employers may limit an employee's use of paid sick days to 24 hours or 3 days in (1) each year of employment, (2) a calendar year, or (3) a 12-month period

Amendments to Paid Sick Leave

Notice Requirement

- Under the amended law, employers who provide unlimited sick leave to their employees may satisfy the notice requirements by simply indicating “unlimited” on employees’ itemized wage statements

Amendments to Paid Sick Leave

Additional Paid Sick Days

- Under the original statute, an employer was not required to provide additional paid sick days if:
- (1) Employer had an existing PTO policy, and
- (2) Employer made available an amount of leave for specified uses, and
- (3) The policy either (a) satisfied the accrual, carry over, and use requirements under the Act, or (b) provided no less than 24 hours or 3 days of paid sick leave for each year of employment or calendar year or 12-month basis

Amendments to Paid Sick Leave

Additional Paid Sick Days

- Under the amended law, the requirements under prong three have changed
- Employer is not required to provide additional paid sick leave if:
- (1) The employer has a PTO policy, and
- (2) The employer made available an amount of leave for specified uses, and
- (3) The policy either: (a) Satisfies specified accrual, carry over, and use requirements, or…

Amendments to Paid Sick Leave

Additional Paid Sick Days

- (b) Provides paid sick leave pursuant to a policy that used an accrual method different than providing 1 hour per 30 hours worked, provided that the accrual is
- (i) On a regular basis so that employees have at least 1 day or 8 hours of accrued sick leave within 3 months of employment, calendar year or 12-month period, and…

Amendments to Paid Sick Leave

Additional Paid Sick Days

- (ii) Employees were eligible to earn at least 3 days or 24 hours of paid sick leave or PTO within 9 months of employment, or
- (c) Is provided pursuant to specified provisions of law or of a memorandum of understanding that meet the requirements of these provisions.

Amendments to Paid Sick Leave

Additional Paid Sick Days

- This change in 3(b) above is significant because it essentially “grandfathers” in employer policies that have a slower accrual rate than 1 hour for every 30 hours worked
- However, employers should be aware that the law also provides that, if an employer modifies the accrual method used in the policy it had in place prior to January 1, 2015, the employer must then comply with the minimum accrual described above

Amendments to Paid Sick Leave

Purpose of Leave

- Employers are now not obligated to inquire or record the purpose for which an employee uses paid sick leave under the Act

Amendments to Paid Sick Leave

Reinstatement

- If an employee is rehired within one year of separation, previously accrued and unused paid sick leave must be reinstated
- Clarification: Of course, an employer is not required to reinstate accrued paid sick leave to a rehired employee whose sick leave was already paid out in full at the time of termination, resignation, or separation of employment

Amendments to Paid Sick Leave

First DLSE Opinion Letter!

- August 7, 2015
- www.dir.ca.gov/dlse/opinions/2015.08.07.pdf
- Confirms that the term “24 hours or 3 days” should include the concept “whichever is greater”
- Example: If employee’s workday is 10 hours, then employee would get 30 hours (3 days), not 24 hours, of paid sick leave
- Also FAQs updated to address amendments: http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

Amendments to Paid Sick Leave

Takeaways

- Ensure policies are compliant with the new amendments
- Paid sick leave policies must be in writing
- Must display physical and virtual posters
- Revise written policies and protocols
- Train managers on new amendments
- Before adverse action is taken against employee, check whether they have taken or requested paid sick leave in the last 30 days

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Uniform Reimbursement

Uniform Reimbursement

- Labor Code § 2802(a) requires employers to reimburse employees “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her duties”
- Employer must also pay for an employee’s uniform, or other clothing if it qualifies as certain apparel regulated by Cal-OSHA or OSHA

Uniform Reimbursement

Lemus v. Denny's

U.S. Court of Appeals; 9th Circuit; June 18, 2015

- Denny's restaurant employee sued, seeking reimbursement for the cost of slip-resistant shoes worn as part of his work attire

Uniform Reimbursement

- The Court held that the restaurant need only pay for clothing that is part of a uniform
- Under California law, the term “uniform” does not include items such as white shirts, dark pants, or black shoes or belts
- Therefore, California employers are not required to reimburse employees for the cost of slip-resistant shoes

Uniform Reimbursement

- Accordingly, the wage deductions were proper as there was an electronic record satisfying the request for written permission
- Although the employer may have exerted some pressure on employees to purchase shoes from certain vendors, it did not exert overwhelming pressure; it did not threaten or punish employees

Uniform Reimbursement Issues

Takeaways

- Review your uniform reimbursement policies to ensure compliance
- Is it a uniform?
- What does it cost for employees to maintain their uniforms?
- Are uniform deposits kept in an interest bearing bank account?

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The First Amendment and Wrongful Termination

The First Amendment and Wrongful Termination

Turner v. City and County of San Francisco
U.S. Court of Appeals; 9th Circuit; June 11, 2015

- Temporary exempt employee of the City was terminated after he spoke out at staff meetings, union meetings, and to supervisors against the City's practice of using temporary exempt employees
- Employee sued the City for retaliation under the First Amendment

The First Amendment and Wrongful Termination

- The retaliation claim was properly dismissed
- The employee's complaints were not protected speech, based on form and context
- Communications were based on a personal grievance regarding specific employment situation
- Moreover, this dispute did not address a "matter of public concern"

The First Amendment and Wrongful Termination

Takeaways

- This decision does not mean employers do not have to be concerned about free speech issues in the workplace
- Review your social media policies
- Remember: The laws on social media, privacy, and free speech are confusing and contradictory
- This is not an issue that can be decided using basic common sense or fairness

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Joint Employment Under Federal Law

Joint Employment Under Federal Law

The Prior Joint Employer Standard

- Previously, the NLRB required an entity to demonstrate “actual and direct control” over workers to establish a joint employment relationship

Joint Employment Under Federal Law

Browning-Ferris v. Sanitary Truck Drivers

NLRB; August 27, 2015

- The NLRB issued its highly anticipated decision in Browning-Ferris
- The NLRB held that Browning-Ferris was a joint employer of workers provided by a staffing agency to BF

Joint Employment Under Federal Law

- Browning-Ferris established the work processes and working hours of the workers provided by the staffing agency
- The staffing agency conducted the hiring, firing, and payroll of the workers it provided to Browning-Ferris

Joint Employment Under Federal Law

The New Joint Employer Standard

- The NLRB's new standard held that a company is a joint employer if it exercises "indirect control" over working conditions or if it has "reserved authority" to do so
- In other words, the mere right to control, even if not exercised, can lead to joint employment now
- This is a much easier standard to prove joint employment

Joint Employment Under Federal Law

Takeaways

- It is now more likely that employers using workers provided by staffing agencies will be found to be joint employers
- Employers should review their employment practices and contractual arrangements with any staffing agencies in light of this landmark NLRB decision

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Joint Employment Under California Law

Joint Employment Under California Law

Statutory Authority

- California Labor Code § 226.8
- It is unlawful for any person or employer to willfully misclassify an individual as an independent contractor

Joint Employment Under California Law

Noe v. Superior Court

California Court of Appeals; June 1, 2015

- Anschutz Entertainment Group ("AEG") owned several entertainment venues
- AEG contracted with Levy Premium Foodservice to provide food and beverages at the venues

Joint Employment Under California Law

- Levy entered into an agreement with Canvas Corporation to provide vendors to sell food and beverages
- Some vendors filed a class action against AEG, Levy, and Canvas as joint employers, based on Section 226.8 violations

Joint Employment Under California Law

- The Court ruled that Section 226.8 is not limited to employers who actually make the misclassification decision
- Any employer who is aware that a co-employer has willfully misclassified their joint employees and fails to remedy the misclassification is liable, too

Joint Employment Under California Law

Takeaways

- Make sure that you have properly classified workers as either employees or independent contractors
- Immediately remedy any improper classifications and insist your co-employers do the same
- Choose your third-party providers carefully
- Review contracts with third-party providers to clarify who will assume financial liability for misclassification of workers

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Same-Sex Marriage

Obergefell v. Hodges
U.S. Supreme Court; June 26, 2015

- Addressed the right of same-sex couples to marry and have their marriage recognized
- Requires states to license a marriage between two people of the same sex
- Requires states to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state

Same-Sex Marriage

Takeaways

- Major Impact on employment laws, such as benefits, leaves, and other policies
- FMLA/CFRA should provide leave to employees to care for a same-sex spouse
- Spousal benefits should be offered to all married couples, including same-sex couples
- Update policies and handbooks to recognize the legitimacy of same-sex marriage (e.g., marital status discrimination)

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Religious Accommodations

Religious Accommodations

Title VII of the Civil Rights Act of 1964

- Prohibits religious discrimination
- Prohibits employers from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate, without undue hardship

Religious Accommodations

EEOC v. Abercrombie & Fitch

U.S. Supreme Court; June 1, 2015

- Job applicant wore a head scarf ("hijab") to her job interview, but did not mention her religion or request an exception to the dress code
- She was denied employment despite receiving a sufficient applicant rating

Religious Accommodations

- The store's policy prohibited "caps"
- There was evidence that the store manager suggested that the applicant not be hired because of the hijab
- The EEOC sued the company, alleging a Title VII violation
- The District Court ruled in favor of the EEOC

Religious Accommodations

- The Court of Appeals reversed, holding that the applicant must provide the employer with actual knowledge of the need for religious accommodation
- The applicant appealed to the United States Supreme Court
- The issue before the Court was whether the Title VII prohibition applies only where an applicant has actually informed the employer of the need for an accommodation

Religious Accommodations

- The Supreme Court reversed the Court of Appeals decision, and held an applicant is not required to provide the employer with actual knowledge of the need for an accommodation
- The applicant need only show that the need for accommodation was a motivating factor in the employer's decision not to hire

Religious Accommodations

- Motive vs. Knowledge?
- The Court stated that “an employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his motive
- “Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if it has no more than an unsubstantiated suspicion that accommodation would be needed”

Religious Accommodations

- Title VII does not impose a “knowledge” requirement like some other anti-discrimination statutes, e.g., the ADA
- An applicant’s religious practice, confirmed or otherwise, cannot be a factor in any employment decisions
- Note: The Court’s decision applies to both applicants and employees

Religious Accommodations

Takeaways

- Train employees who are involved in the hiring process on discrimination issues
- Train them to avoid these new problems concerning religious attire and grooming issues
- Revise existing policies to include a statement that the employer will provide reasonable accommodation for religious practices, including religious attire and grooming
- Modify handbook policies on discrimination, harassment, dress code, etc.

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Reasonable Accommodation

Reasonable Accommodation

- As discussed previously in the context of religious accommodations, employers must make “reasonable accommodations” to employees under California’s Fair Employment and Housing Act (FEHA)
- Such accommodations often involve disability or health related conditions of employees
- The FEHA includes an anti-retaliation provision

Reasonable Accommodation

- Until AB 987 was signed by Governor Brown on July 16, 2015, uncertainty existed regarding whether “reasonable accommodation” requests constituted protected activity under anti-retaliation provision

Reasonable Accommodation

- AB 987 was passed to overturn the 2013 court of appeal decision in Rope v. Auto-Chlor System of Washington
- In Rope, Plaintiff sought to donate his kidney to sister
- He requested leave from his employer to undergo the transplant surgery and recover
- After allegedly ignoring Plaintiff's requests for leave, the employer approved an unspecified amount of leave

Reasonable Accommodation

- Two months before the operation date, Plaintiff's employer fired him for poor performance
- Plaintiff allegedly received only positive performance reviews and had no disciplinary problems
- Plaintiff filed suit asserting multiple claims, including retaliation for requesting a reasonable accommodation under the FEHA
- The trial court dismissed his lawsuit, including the retaliation claim; Plaintiff appealed

Reasonable Accommodation

- Court of Appeal affirmed the trial court's dismissal of retaliation claim
- The Court interpreted the retaliation provision under the FEHA to require that:
- (1) An employee engaged in activities in opposition to the employer at the time of the alleged retaliation, and
- (2) The employer knew about it

Reasonable Accommodation

- The Court held that requesting a reasonable accommodation was not “protected activity” under the FEHA
- The Court did not interpret an employee’s request for reasonable accommodation as “opposition” to an employer
- AB 987 effectively overruled this decision by making it clear that an employee may request reasonable accommodations in the workplace without fear of retaliation

Reasonable Accommodation

Takeaways

- Make policy/handbook compliance on this subject a priority
- Be aware of inferences that may result solely based on the timing of employment-related decisions
- Do not forget about the interactive process, a separate duty apart from the anti-retaliation law

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Amendments to CFRA

Amendments to CFRA

California Family Rights Act of 1991 ("CFRA")

- CFRA was enacted in California in 1991, a two years before the Federal Family and Medical Leave Act of 1993 ("FMLA")
- In 1993, CFRA was amended to "closely resemble" the FMLA
- But there are several differences between the CFRA and the FMLA
- Note: Employers must apply the sections of the two laws that are most favorable to employees

Amendments to CFRA

Reminder

- The CFRA was enacted to ensure leave rights for employees for:
- Birth of a child
- Placement of a child for adoption or foster care
- Serious health condition of employee's child, parent, or spouse
- Employee's serious health condition

Amendments to CFRA

- CFRA was amended on July 1, 2015
- The amendments incorporate the 2013 FMLA regulations to the extent they are not inconsistent

Amendments to CFRA

New Definitions

- Unable to perform the function of his or her position has been changed to an employee is unable to perform any one or more of the essential functions of his or her position
- Covered employers now includes successors-in-interest of a covered employer
- Birth of a child now includes bonding with a child

Amendments to CFRA

- Serious health condition now includes in-patient care or continuing treatment, e.g., for substance abuse
- Spouse now expressly includes same-sex marriages

Amendments to CFRA

Reinstatement

- Employees are entitled to reinstatement even if they have been replaced or their positions have been restructured
- Reinstatement is now expressly defined as the return of an employee to the position that the employee held prior to CFRA leave, or a comparable position

Amendments to CFRA

Eligibility

- Employees who are not eligible for CFRA leave at the start of their leave because they have not met the 12-month requirement may meet this requirement while on leave

Amendments to CFRA

Leave Period

- If a leave is common to CFRA and FMLA, the 12-month period will run concurrently
- Employers may choose any of the methods allowed under FMLA for calculating the 12-month period

Amendments to CFRA

Takeaways

- Update any policies on FMLA/CFRA leave
- Train managers on the new requirements
- Employers must carefully monitor for any changes in an employee's eligibility during the employee's leave

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Minimum Salary Test

Minimum Salary Test

Federal Fair Labor Standards Act ("FLSA")

- Guarantees minimum wages and overtime pay for non-exempt employees
- Employee must meet minimum tests and be paid on a salary basis no less than a specified minimum amount
- Since 2004, the standard salary level for federal exemption has been $455 a week, which is $23,660 per year

Minimum Salary Test

- The current federal standard is lower than the California standard
- But, this may soon change….

Minimum Salary Test

Proposed Increase for Salary

- From $455 to $970 per week
- From $100,000 to $122,148 per year for “highly compensated employees”

Minimum Salary Test

Impact to California

- Current California Salary Test
- 2015: $720 per week
- 2016: $800 per week
- DOL's proposal:
- 2016: $970 per week
- Minimum wage could be creeping up to $13 per hour by 2017…stay tuned for developments in Sacramento.

Minimum Salary Test

Takeaways

- The proposed change would greatly affect employers with low paid non-exempt employees
- Monitor the proposed changes, and raise minimum salary if required

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New Bills Signed by Governor

No Retaliation Against Family Members of Employee Whistleblowers

- Governor Brown signed AB 1509, effective January 1, 2016.
- AB 1509 prohibits employers from retaliating against an employee who is a family member of an employee who has or is perceived to have engaged in protected conduct or made a protected complaint (such as whistleblowing).

Employers Prohibited From Using E-Verify For Purposes Not OK Under Federal Law

- AB 622 signed into law on October 9, 2015.
- E-Verify is a free Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States.
- New bill expands the definition of an “unlawful employment practice” to prohibit an employer or any other person or entity from using the E-Verify system at a time or in a manner not required by a specified federal law.

- New Gender-Based “Fair Pay Act” Enacted
- California Fair Pay Act signed into law on October 6, 2015.
- SB 358 seeks to eliminate the gender wage gap by amending Section 1197.5 of the Labor Code (“Section 1197.5”), relating to private employment. Such amendments will become effective on January 1, 2016.

Vetoed Legislation:

- Governor Vetoes AB 465, Saves Mandatory Arbitration Agreements
- Governor Vetoes AB 676 (Employment Discrimination And A Person's Unemployment Status)
- Governor Vetoes AB 1017 (Prohibition On Seeking Salary Information About An Applicant For Employment)
- Governor Vetoes SB 406 (Expansion Of CFRA: 12 Weeks Of Unpaid Leave To Extend To Kin Care)

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Any questions?

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