

2013 New Labor Laws

Unless specified, the following list of new legislation goes into effect January 1, 2013. The entire list and a FREE White Paper can also be viewed at www.calchamber.com/newlaws2013.

Religion and Reasonable Accommodation

AB 1964 clarifies that Fair Employment and Housing Act (FEHA) discrimination protections and reasonable accommodation requirements cover religious dress practices and religious grooming practices. It also specifies that segregating an individual from other employees or the public is not a reasonable accommodation of religious beliefs or observances.

Sex Discrimination and Breastfeeding

AB 2386 changes the definition of "sex" under FEHA for purposes of discrimination protections to include breastfeeding and related medical conditions.

Social Media and Personal Passwords

AB 1844 prohibits employers from requiring or requesting employees or job applicants to provide user names or passwords for personal social media accounts and from requesting an employee or applicant to divulge personal social media. There are limited exceptions, including an exception relating to employer investigations.

Inspection of Personnel Records

AB 2674 makes significant changes to the inspection and retention of personnel records, in the following areas: (1) who has the right to inspect or request copies of personnel files; (2) any deadlines for providing access to files; (3) where and how records must be made available; (4) an employer's obligations to retain files; and (5) penalties for failure to comply.

Pregnancy Disability

Amended pregnancy disability regulations take effect December 30, 2012. The approved pregnancy disability regulations make significant changes to state law, including:

- A change to the definition of "four months."
- An expanded definition of when a woman is "disabled by pregnancy."
- Clarification of an employer's responsibilities regarding the reasonable accommodation or transfer of employees affected by pregnancy, childbirth or related medical conditions.
- An expansion of protections to include that it is unlawful to discriminate against or harass an applicant or employee based on "perceived pregnancy."

The regulations also make mandatory changes to Notices "A" and "B," which provide information for employees about their rights and responsibilities under pregnancy disability leave (Notice "A") and the California Family Rights Act (Notice "B").

Disability Discrimination and Accommodation

Amended disability discrimination and accommodation regulations take effect December 30, 2012. The changes to the disability regulations include an expansion of the definitions of "mental" and "physical" disability and a detailed description of the interactive process and the obligations of both the employer and the employee during that process. The amended regulations include specific examples of what constitutes a reasonable accommodation, including a discussion of when a leave of absence might be an appropriate accommodation.

Itemized Wage Statements/Temporary Service Employers

AB 1744 is effective July 1, 2013. It relates to itemized wage statement and wage notice requirements and requires specified information from temporary service employers.

Penalties for Wage Statement Violations

SB 1255 amends the Labor Code to specifically define an “injury” for purposes of violating the itemized wage statement statute. Employers are required to provide specified information to employees on a wage statement each time wages are paid. An employee who “suffers an injury” as a result of an employer knowingly or intentionally failing to comply with the statute is entitled to recover damages against the employer.

Commission Agreements

AB 2675 amends the written commission agreement law (which takes effect on January 1, 2013) to exempt certain types of wage payments from the written agreement requirement.

Fixed Salaries and Overtime

AB 2103 amends the Labor Code to state that payment of a fixed salary to a nonexempt employee will be deemed to be payment only for the employee’s regular nonovertime hours, notwithstanding any private agreement or “explicit mutual wage agreement” to the contrary.

Wage Garnishment

AB 1775 increases the amount of wages that are exempt from garnishment. This amendment is effective July 1, 2013.

Human Trafficking Posting

SB 1193 requires specified businesses to post an 8.5” x 11” notice, on or before April 1, 2013, that contains information about organizations that provide services to eliminate slavery and human trafficking. The Department of Justice will develop a model notice that complies with the requirements of SB 1193 and make the model notice available.

Workers’ Compensation Reform

SB 863 is workers’ compensation reform legislation supported by the CalChamber. The legislation offsets necessary increases in permanent disability benefits and potentially lowers system costs for employers. Some of the legislative reforms take effect January 1, 2013, but many of the laws require administrative/regulatory action before implementation.

Accessibility Reform

CalChamber-supported SB 1186 limits frivolous litigation regarding technical violations concerning disability access by reducing statutory damages, putting into place new provisions to prevent “stacking” of multiple claims to increase statutory damages and banning letters making demands for money before litigation.

FEHC Eliminated, Duties Transferred to the DFEH

SB 1038 eliminates the California Fair Employment and Housing Commission (FEHC). The biggest change is the manner in which charges of discrimination or harassment are handled. The administrative hearing process before the FEHC is eliminated. Instead, the California Department of Fair Employment and Housing (DFEH) will be able to bring civil actions on behalf of a complainant directly in court and require mandatory dispute resolution.

Intellectual Disabilities

AB 2370 and **SB 1381** substitute the term “intellectual disability” for the outdated term mental retardation in many statutes and regulations.

Unemployment Insurance: Overpayment and Penalties

AB 1845 provides that the Employment Development Department (EDD) can deny reimbursement to an employer for any overpayments made to its unemployment insurance reserve accounts if the EDD determines that the overpayment resulted from an employer’s failure to respond to or provide adequate information to the EDD. This new law applies to benefit overpayments established on or after October 22, 2013.

Prevailing Wage

Under **AB 2677**, increased employer payment contributions that result in a lower hourly straight time or overtime wage do not constitute a violation of the applicable prevailing wage determination as long as certain specified conditions are met.

Farm Labor Contractors

AB 1675 changes the penalties for failing to license farm labor contractors. Existing law requires farm labor contractors to be licensed by the Labor Commissioner and to comply with specified employment laws applicable to farm labor contractors. Under existing law, a person who violates farm labor contractor requirements is guilty of a misdemeanor punishable by specified fines, or imprisonment in the county jail for not more than six months, or both.

This new law would, in addition, subject a person who violates the licensing requirement to citations issued by the Labor Commissioner and civil penalties that increase as the number of citations for violations increase.

Warehouse Workers

AB 1855 adds warehouse workers to the list of specified contractors subject to sufficient funds requirements.

Specifically, existing law prohibits a person or entity from entering into an agreement for labor or services from specified contractors (construction, farm labor, garment, janitorial or security guard) where the person or entity knows, or should have known, that the contract or agreement does not include funds sufficient to comply with applicable laws or regulations. AB 1855 adds warehouse workers to this list.