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Employment law: East Coast v. West Coast

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California has the reputation of being the most heavily regulated and expensive state for employers. With a host of new laws in recent years, New York is vying for California's "top" spot. We did a side-by-side comparison to see how the two states compare. Our conclusion: California definitely "wins" as the least employer-friendly state, but New York is gaining fast!

Minimum wage

Both states require employers to pay hourly rates that are higher than the federal minimum (\$7.25 per hour). New York's minimum wage, currently set at \$8, is scheduled to increase to \$8.75 on Dec. 31, 2014 and \$9 a year later. California's minimum wage is currently \$9 and is scheduled to increase to \$10 on Jan. 1, 2016.

"Winner": California

Overtime

New York generally follows the federal overtime rules that require that nonexempt employees receive one-and-a-half times their regular hourly rate for all hours worked in excess of 40 in a workweek. California follows this rule, but also requires employers to pay daily overtime for hours worked in excess of eight in a day and to increase the rate to double time for all hours worked in excess of 12 in a day. Because of this and other complexities in California's overtime laws, California has become the focal point of wage and hour class actions.

"Winner": California

Wage notices

Both states require employers to provide new employees with wage notices that specify, among other things, rates of pay, pay day and allowances and to provide detailed information to employees with each wage payment about their earnings. Even minor discrepancies under California law can lead to significant penalties under the Private Attorneys General Act (PAGA). Both states also require commission arrangements to be set forth in a written agreement

specifying, among other things, how commissions are calculated and earned.

"Winner": Draw

Deductions from wages

Both New York and California restrict an employer's ability to make deductions from an employee's wages. But unlike California, New York has promulgated detailed and restrictive procedures that must be followed in order to make employee wage deductions.

"Winner": New York

Meal and rest periods

New York has detailed rules for meal periods, including industry-specific requirements. California also has specific rules for meal periods, but unlike New York it requires employers to provide paid rest breaks and "heat recovery" periods, depending on the type of employment and the length of the employee's shift. Additionally, California's PAGA has spawned a multiplicity of quasi-class action lawsuits for every manner of possible infraction, including the failure to provide employees with "suitable seating."

"Winner": California

Plant closings and mass layoffs

New York's law is significantly more protective of employees' rights than its California counterpart. The New York law applies to smaller employers (50 vs. 75) and its notice obligations are triggered for plant closings and layoffs impacting at least 25 (vs. 50) employees. New York requires employers to provide employees with at least 90 (vs. 60) days' advance notice of a mass layoff or closing.

"Winner": New York

Covenants not to compete

New York and California differ greatly with respect to the enforceability of postemployment covenants not to compete. Noncompetition and customer nonsolicitation agreements are prohibited by statute in California, subject to limited exceptions. New York courts will enforce a noncompete agreement if the restrictions are reasonably limited geographically and temporally and are necessary to protect the employer's le-

gitimate business interest.

"Winner": California

Anti-discrimination

Though slightly different in scope and protections, both states offer comprehensive protection against unlawful discrimination and harassment. Unlike New York, California law expressly prohibits discrimination on the basis of gender identity and expression and has a specific law regarding accommodation of pregnancy.

"Winner": Draw

Arbitration

In California, the employer must pay all costs and expenses that are unique to arbitration, including the arbitrator's fees.

"Winner": California

Whistleblower

New York's whistleblower statute prohibits retaliation against an employee who has blown the whistle about unlawful conduct that creates a substantial threat and danger to the public health or safety or constitutes health care fraud. California's law is broader, prohibiting retaliation against an employee who has disclosed information (internally or externally), or who the employer believes [may] disclose information about what the employee reasonably believes to be a violation of law.

"Winner": California

Employee privacy

California and New York differ vastly with respect to an employee's right to privacy. The California Constitution expressly recognizes that its citizens possess an "inalienable" right to privacy, whereas New York's constitution does not. California employers cannot require or request employees or applicants to disclose their usernames or passwords to social media sites.

"Winner": California

Criminal background checks

Both states (i) prohibit employers from requesting information about or considering past arrests not resulting in a conviction and (ii) limit an employer's ability to consider past criminal con-

victions when making an employment decision. Neither state has yet barred private employers from inquiring about past criminal convictions ("ban-the-box"), but public employers in California are prohibited from such inquiries.

"Winner": Draw

Credit checks

New York permits employers to conduct credit checks so long as they obtain advance authorization from the employee and follow other procedures. California restricts credit checks, permitting them only for certain employees who have managerial jobs or jobs that involve regular access to at least \$10,000 in cash or certain types of confidential or proprietary information.

"Winner": California

Family and medical leaves of absence

California provides employees with greater leave entitlements for family and medical purposes. Pregnant California employees can qualify for up to seven months of job-protected leave in some circumstances. California also provides up to six weeks of state-funded benefits for family leave. In contrast, New York follows the federal Family and Medical Leave Act and does not have separate sick and leave laws.

"Winner": California



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