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Five New Employment Laws that Every California Employer Should Know

California Employment Law Blog on **October 13, 2022**

A new year brings new employment laws for California employers. California employers will want to begin revising employee policies and handbooks now, so that they are prepared to comply with these new laws when the majority of them go into effect on January 1, 2023. Here are five new employment laws that every California employer should know:

AB 1041 (Expanded Definition of "Family Member" for Medical and Sick Leave)

Through AB 1041, the California legislature amended Government Code section 12945.2 and Labor Code section 245.5 to expand the definition of "designated person" for purposes of employee medical leave. Section 12945.2 provides qualifying employees with up to 12 workweeks in any 12-month period for unpaid family care and medical leave. Section 245.5 relates to California paid sick leave. Both sections permit an employee to take protected leave to care for a "family member," which is currently defined as a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner. With the passage of AB 1041, the Legislature added a "designated person" to this list of "family members" for whom an employee may take protected leave. A "designated person" is defined as "any individual related by blood or whose association with the employee is the equivalent of a family relationship." In light of this broad definition, employers should be prepared to provide employees with leave to care for a wider range of persons. An employee may identify his or her designated person at the time of requesting protected leave. However, an employer may limit an employee to one designated person per 12-month period.

AB 1949 (Bereavement Leave)

AB 1949 adds section 12945.7 to the Government Code, in order to provide employees with protected leave for bereavement. Under this new law, eligible employees may request up to five days of bereavement leave upon the death of a qualifying family member. Family member is defined as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent in law. Although the employee must complete bereavement leave within three months of the family member's death, the employer may not require that the five days be used consecutively. Statutory bereavement leave is unpaid, but the employer must allow the employee to use any accrued and unused paid vacation, personal leave, sick leave, or other paid time off for this purpose. Section 12945.7 prohibits discrimination, interference or retaliation against an employee for taking bereavement leave; also, the employer must maintain confidentiality when an employee takes bereavement leave. Finally, section 12945.7 does not apply to certain union employees, with an existing agreement regarding bereavement leave.

SB 1162 (Posting Pay Ranges and EEO Reporting Requirements)

SB 1162 modifies Government Code section 12999 and Labor Code section 432.3 to require employers to provide candidates with salary ranges on job postings, report employee compensation and demographic information to the California Civil Rights Department (formerly the DFEH) on an annual basis, and retain relevant records. For job postings (including those posted by third parties), employers with 15 or more employees will be required to include a pay range, which is defined as the salary or hourly wage range that the employer reasonably expects to pay for the position. In addition to the current requirement that, upon request, the employer must provide a candidate a pay range, the employer must now also provide existing employees with a pay range, when requested. Failure to comply with the pay range disclosure or record retention requirements can result in penalties of up to $10,000 per violation.

The new reporting requirement concerns annual employer pay data reports. Employers must now report the median and mean hourly rate by each combination of race, ethnicity, and sex, within each job category, with the first report due on May 10, 2023, based on 2022 pay data. Employers with 100 or more employees hired through labor contractors must now produce data on pay, hours worked, race/ethnicity, and gender information in a separate report. Employers who fail to timely file these required reports face civil penalties of up to $200 per employee.

Finally, employers must retain records of job titles and wage rate histories for each employee for the duration of the employee's employment and three years after termination. Failure to comply with these retention requirements can result in penalties of up to $10,000 per violation.

AB 2188 (Off the Job Cannabis Use Protection)

Effective January 1, 2024, AB 2188 adds section 12954 to the Government Code, which prohibits employers from discriminating against a person because of cannabis use while off the job, with some exceptions. Employers may take action against a person who fails a pre-employment drug test, or other employer-required drug test, that does "not screen for non-psychoactive cannabis metabolites." This is because, according to the California Legislature, cannabis "matabolites do not indicate impairment, only that the individual has consumed cannabis in the last few weeks." The employer may administer a performance-based impairment test, and terminate any employee who is found to be impaired in the workplace. This new law does not apply to employees in the building or construction industry, or in positions requiring a federal background investigation or clearance, and does not preempt state or federal laws that require employees to be tested for controlled substances.

AB 152 (COVID-19 Supplemental Paid Sick Leave Extension)

AB 152 modified Labor Code section 248.6 and 248.7 in order to extend COVID-19 Supplemental Paid Sick Leave (SPSL), previously blogged about here, which was expected to expire on September 30, 2022. This new modification allows California employees to use any remaining SPSL through December 31, 2022. It does not provide employees with new or additional SPSL. In a departure from the original version of the law, when an employer requires an employee to take a COVID-19 test five days or later after a positive test result, the employer is now permitted to require the employee to submit to a second diagnostic test within no less than 24 hours. If the employee refuses, the employer may decline to provide additional SPSL. The employer obligation to cover the cost of any employee COVID-19 tests remains in effect.

We will continue to monitor and post about these and other forthcoming California employment laws as they develop.

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