

14 Things Employers Must Do: 2008 Version

Every year, new laws and best practices change. Here are the 14 things California employers need to do as the new year begins:

1. Military Spouse Leave

Employers with 25 or more employees must give qualified employees as many as 10 unpaid days off when their spouse is on leave from military deployment.

Employees who work at least 20 hours per week and who are spouses of a member of the military must be provided up to 10 days of unpaid leave when the spouse is on leave from active duty in the U.S. Armed Forces, Reserves or National Guard. Employees must give two days' notice and provide appropriate written documentation.

Though the law does not expressly say so, the term "spouse" includes a registered domestic partner. Family Code section 297.5 provides that registered domestic partners must be granted the same rights as those granted to spouses.

2. Minimum Wage Changes

The state's minimum wage will increase from \$7.50 to \$8.00 an hour on January 1, 2008, as a result of legislation passed last year.

3. Computer Professional Hourly Rate Lowered

A computer professional is exempt from overtime requirements if the computer professional is primarily engaged in work that is intellectual or creative. This law reduces the hourly rate computer employees must earn to be exempt from California's overtime requirements to \$36 from the current rate of \$49.77 per hour. The Division of Labor Standards Enforcement adjusts the rate annually.

4. Workers' Compensation Temporary Disability Benefits

This law extends the time an employee may receive aggregate disability payments as a result of a workers' compensation injury from two to five years.

5. Notice of Earned Income Credit Rights

Employers now must notify employees they may be eligible for the federal earned income tax credit within one week of the date the employer provides an annual wage summary (W-2 or 1099). The law expressly provides that an employer cannot substitute a poster for individual notice. Employers must provide notice to the employee in person or mail to the employee at the employee's last known address. Although the Earned Income Tax Credit is available only to a limited number of employees, all employees must receive the required notice. Employers will likely find it most efficient to enclose a copy of the notice with the W-2 Form, 1099 Form or similar annual income statements issued to employees. Finally, upon the request of any employee an employer must process, in accordance with federal law, Form W-5 for advance payments of the tax credit.

6. Cell Phone Usage While Driving

This law was passed last year, and becomes effective in July 2008. It requires anyone in California who wishes to talk on a cell phone while driving to use a "hands free" device. Employers should take steps to comply with this law by implementing a policy that requires all employees to use "hands free" devices while driving on company business.

7. Changes to Itemized Pay Statements

Employers are prohibited from including any more than the last four digits of an employee's social security number or an existing employee identification number on the employee's itemized pay stub. January 1, 2008 is the deadline for all employers to comply with this requirement.

8. New I-9 Form

A new I-9 form has been introduced that will be effective until June 2008. The only substantive change is to the list of acceptable employment authorization documents. The list has been expanded to include employment authorization documents issued by the U.S. Citizenship & Immigration Services (USCIS). A number of acceptable documents have been removed, including a Certificate of U.S. Citizenship, Certificate of Naturalization, Refugee Travel Document and Alien Registration Receipt Card.

9. New EEO-1 Form

Employers may have noticed some changes this year when filing their annual EEO-1 Report. The EEO-1 form has two distinct changes from years past: (1) the "Officials and Managers" category is now divided into two separate categories; and (2) "Native Hawaiian or Other Pacific Islander" and "Two or More Races (Not Hispanic/Latino)" have been added to the racial classifications list.

10. New Posters/Pamphlets

There are several new or revised posters and pamphlets that employers should ensure they have in their workplaces, including the updated DFEH harassment poster, the new minimum wage poster that accurately reflects 2008's new rates, and updated pamphlets on paid family leave and state disability insurance published by the EDD.

11. Separate Arbitration Agreements Necessary

Including a mandatory, binding arbitration statement in an employee handbook is insufficient to create a contract with employees to require arbitration of employment-related disputes. A California court of appeal clarifies that in order for a court to compel arbitration an employer must provide evidence of a signed arbitration agreement. An acknowledgement of receipt of an employee handbook, particularly a handbook that refers to a nonexistent, separate arbitration agreement, will not withstand judicial scrutiny.

12. Workers' Compensation

Authorizes the Labor Commission to systematically identify unlawfully insured employers and prioritize targets for the workers' comp (WC) program in consideration of available resources. This bill requires the report to be posted on the Labor Commissioner's Web site. The funds will come from the WC revolving fund in the state treasury. The bill directs the Director of Employment Development to share information with the Labor Commissioner so she can more readily identify unlawfully insured employers.

13. Health Care and Whistleblower Protection

A health facility is prohibited from discriminating or retaliating against any patient, employee, a member of the facility's medical staff, or any other health care worker of the facility because that person has (1) presented a grievance, complaint or report to an entity or agency responsible for accrediting or evaluating the facility or to any other governmental agency; or (2) has initiated, participated or cooperated in an investigation or administrative proceeding related to the quality of care, services or conditions at the facility. An employee who has been discriminated against in employment in violation of the bill shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the employer, or to any remedy deemed warranted by the court, as well as lost income and legal costs.

14. Employees Must be able to Cash Paychecks Without Cost

California Labor Code section 212 requires employers to ensure paychecks may be cashed without delay and without a fee or a discount. It also requires that if wages are paid by check, the check must be negotiable and payable in cash, on demand, without discount (that is, the employee must be able to cash it immediately without having to pay a check-cashing fee), at some established place of business in the state, and the name and address of that business must appear on the check.

These requirements do not apply where the employee has agreed to direct deposit. Direct deposit agreements must be voluntary.

The statute does not necessarily require that paychecks be drawn on a California bank. It does require that California employees be able to cash their paychecks without delay or a hold and without paying a fee at some place of business in the state.

CHECKLIST FOR TO-DO'S

What Should You Do?

- Update Your Employee Handbook
- Ensure all employees are covered by workers' compensation insurance.
- Review and update your expense reimbursement policy to clearly communicate to employees how and when expenses will be repaid.
- Consult with your accountant or a tax expert before entering into an expense reimbursement contract with an employee to fully understand the tax implications of such an agreement.
- If you choose to reimburse at a rate less than the IRS rate, consult with legal counsel to ensure employees are being reimbursed for all actual costs associated with performing their job duties.
- Create arbitration agreements separately from your employee handbook.
- Clearly communicate all policies to employees.
- Consult with legal counsel if considering mandatory, binding arbitration.
- Ensure California employees have a means of cashing paychecks without incurring a fee by providing in-house check-cashing services or with a third-party located in California where checks can be cashed, or pay the bank's fee on behalf of employees; and
- Consult counsel regarding other options for compliance and defense of potential claims.

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