

# NEW CALIFORNIA LAWS 2012

By: Lisa V. Ryan

The California Legislature passed a number of measures impacting employers during the 2011 legislative session. Those bills signed by the Governor include a dramatic restriction to how and when employers can obtain background credit checks of current and prospective employees as well as specific requirements to provide health care coverage to employees on pregnancy disability leave. A summary of those highlights follows:

**Credit check** — AB 22 prohibits employers and prospective employers, not including certain financial institutions, from obtaining and using consumer credit reports (credit information) about applicants or employees. The prohibition does not apply to “managerial positions,” defined as those who qualify for the executive exemption from overtime and employees who would have access to specific financial and confidential information.

**Health benefits during Pregnancy Disability Leave** — SB 299 requires all employers with five or more employees to continue to maintain and pay for health coverage under a group health plan for an eligible female employee who takes pregnancy disability leave up to a maximum of four months in a 12-month period. This requirement applies whether an employee is eligible for FMLA/CFRA protected leave.

**Interference with rights under leave laws** — AB 592 makes it an unlawful employment practice for an employer to interfere with, restrain or deny the attempt to exercise any right provided under the California Family Rights Act and the Pregnancy Disability Leave laws.

**Notice of pay details** — AB 469, titled the Wage Theft Prevention Act of 2011, makes a number of changes related to “theft” of employee wages and requires employers to provide nonexempt employees, at the time of hire, a notice that specifies:

- The rate of pay and the basis, whether hourly, salary, piece commission or otherwise, including any applicable overtime rate;
- The regular pay day designated by the employer as required under the Labor Code;
- The name of the employer, including any “doing business as” names;
- The physical address of the employer’s main office or principal place of business and any mailing address, if different;
- The telephone number of the employer; and
- The name, address and telephone number of the employer’s workers’ compensation carrier.

The employer must also notify each employee in the form of a new or amended written notice of any changes made to this information within seven days of implementation, subject to some exceptions.

Other measures impacting employers in 2012 include:

**Administrative penalties** — AB 240 allows an employee that alleges a minimum wage violation to recover liquidated damages pursuant to any complaint brought before the Division of Labor Standards Enforcement. This new law would allow the Labor Commissioner to also award such damages.

**Agricultural labor relations** — SB 126 grants the Agriculture Labor Relations Board the right to certify a labor union as the exclusive bargaining agent for agricultural employees if it finds employer misconduct that “would render slight the chances of a new election reflecting the free and fair choice of employees.”

**Apprentice programs** — SB 56 changes the audit requirements for apprenticeship programs. This new law eliminates the mandate of random audits during five-year increments, and instead directs the division to conduct audits of apprenticeship programs generally. It also creates requirements for applications for building and construction trades programs for approval of a new or expanded apprenticeship program.

**E-Verify** — AB 1236 prohibits California state agencies and local governments from passing mandates that require employers to use E-Verify as a condition of receiving a government contract or obtaining a business license unless required by federal law or as a condition of receiving federal funds. Employers may continue to use the Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States.

**Farm labor contractors** — AB 243 requires farm labor contractors to disclose on the itemized payroll statement the name and address of all legal entities (for example other growers or other farm labor contractors) that secured the employer’s services.

**Gender expression** — AB 887 amends the Fair Employment and Housing Act to further define “gender” to include both gender identity and “gender expression” and to make clear that discrimination on either basis is prohibited. “Gender expression” is a person’s gender-related appearance and behavior whether or not stereotypically associated with the sex assigned to the person at birth. AB 887 also amends Government Code relating to dress codes to include that an employee must be allowed to dress consistently with both the employee’s gender identity and gender expression.

**Genetic information** — SB 559 amends the Fair Employment and Housing Act to state that employers are prohibited from discriminating against employees on the basis of genetic information. The California Genetic Information and Nondiscrimination Act goes beyond the federal protections by incorporating genetic information into the state’s civil rights codes. “Genetic information” is defined as the individual employee’s genetic tests, the genetic tests of the employee’s family members and the manifestation of a disease or disorder in the employee’s family members.

**Independent contractors** — SB 459 provides new penalties of between \$5,000 and \$25,000 for the “willful misclassification” of independent contractors. This measure further prohibits employers from deducting from the paychecks of misclassified individuals any fees or other charges that could not be deducted from paychecks of employees, e.g. for workspace, licenses and equipment.

**Insurance Non-Discrimination Act** — SB 757 expands the California Insurance Equality Act by prohibiting employers that operate in multiple states from discriminating against same-sex couples by not providing the same insurance coverage for domestic partners as they do for spouses.

**Organ and bone marrow donor leave** — SB 272 clarifies the implementation of California’s organ and bone marrow donor leave law, which applies to employers with 15 or more employees. The new legislation clarifies that the days of leave are business days, not calendar days, and that the one-year period is measured from the date the employee’s leave begins.

**Prevailing Wage penalties** — AB 551 increases the maximum penalty from \$50 to \$200 per calendar day for each worker paid less than the determined prevailing wage and increases the minimum penalty from \$10 to \$40 per day for violations of prevailing wage obligations. It also increases the penalty from \$25 to \$100 per calendar day, per worker, against contractors and subcontractors that fail to respond to a written request for payroll records within 10 days.

**Project Labor Agreements** – SB 922 prohibits the enactment of local ordinances, initiatives, or charter provisions that impose blanket bans on the use of project labor agreements.

**Public Agency fact finding** – AB 646 allows local public employee organizations to request fact-finding if a mediator is unable to reach a settlement within 30 days of appointment.

**Written commission agreement** — AB 1396 requires all employers provide a written contract to employees who are paid commission as a method of payment. The written contract must set forth the method by which the commissions will be computed and paid. Unlike the other bills highlighted above, AB 1396 does not go into effect until January 1, 2013.

Lisa V. Ryan is a partner with Cook Brown LLP, a California labor and employment boutique firm. For information about any of these bills and how they may impact your business, please contact Lisa at [lryan@cookbrown.com](mailto:lryan@cookbrown.com).