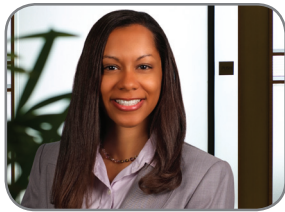


**California Employment Law - The Year Ahead****Nykia J. Wilson***Associate*

619.699.2416

nwilson@luce.com

www.luce.com/nykiawilson

**Contact Us.**

If you have any questions regarding this *e-Update*, please contact the author or any member of Luce Forward's Labor & Employment group.

This edition of the *Labor & Employment e-Update* provides an overview of significant employment law developments that will affect California employers in 2012. Employers are advised to review and update their policies and practices to ensure compliance in light of these developments.

**California Employers Must Make Specific Disclosures to New Hires.**

Pursuant to California's "Wage Theft Prevention Act of 2011" (the "Act"), beginning January 1, 2012, most California employers must provide employees with specific information upon hire, in writing. This includes:

- The rate or rates of pay and the basis for pay, including overtime rates (e.g., hour, shift, day, week, salary, piece, commission, or other).
- All allowances claimed as part of the minimum wage (including for meals or lodging).
- The employer's regular payday.
- The name of the employer, including any "doing business as" names used by the employer.
- The physical address of the employer's main office or principal place of business; if the mailing address is different from the principal physical address, it must also be included.
- The telephone number of the employer.
- The name, address, and telephone number of the employer's workers' compensation insurance carrier.

The information provided in each of these categories must be updated in writing within seven (7) calendar days of any change.

Importantly, employers must also now maintain payroll records for three (3) years, which is one year longer than previously required by California law.

The Act allows aggrieved employees to recover attorney's fees and costs, and provides for substantial civil and criminal penalties against employers, for violations.

The Act also requires employers to provide "[a]ny other information the state Labor Commissioner deems material and necessary." The California Division of Labor Standards Enforcement published a template disclosure on December 30, 2011, which can be accessed here:

[http://www.dir.ca.gov/dlse/Governor\\_signs\\_Wage\\_Theft\\_Protection\\_Act\\_of\\_2011.html](http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html)

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**The Prohibition Against “Sex” Discrimination or Harassment Includes “Gender Identity” and “Gender Expression.”**

A.B. 887 amends various California laws prohibiting discrimination and harassment on the basis of “sex” to specifically include gender, gender identity and gender expression. While “gender identity” is not defined by the legislation, A.B. 887 defines “gender expression” as “a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth.” Employers are advised to review and revise their Employee Handbook in light of this amendment.

**California Adopts A Law Prohibiting Discrimination on the Basis of Genetic Information.**

Comparable to the federal Genetic Information Nondiscrimination Act, California employers will be prohibited from discriminating against employees on the basis of genetic information. Employers will therefore not be permitted to make employment decisions based on the genetic characteristics of employees. Employers are advised to review and revise their Employee Handbook in light of this legislation.

**California Employees Who Take Pregnancy Disability Leave Are Entitled to Continuation of Health Benefits.**

All employers with more than five (5) or more California employees are subject to Government Code section 12945, the Pregnancy Disability Leave Law (“PDL”). PDL provides up to 4 months of unpaid leave for an employee disabled by pregnancy. Effective January 1, 2012, employers must continue health benefits for employees taking PDL, for the entire duration of the leave. Employers should review and update their PDL policy to ensure compliance with this new requirement.

**California Employers Are Prohibited from Using Credit Reports for Employment Purposes.**

Beginning January 1, 2012, an amendment to the California Labor Code prohibits the use of credit reports in employment-related background checks, with certain specifically-enumerated exceptions. Most financial institutions are exempt from these prohibitions. Employers are advised to reevaluate their background check policies, procedures, and forms in light of this amendment.

**The National Labor Relations Board Imposes New Posting Requirement Affecting Most Employers.**

The National Labor Relations Board (“NLRB”) has issued a new poster requirement, which will become effective on April 30, 2012 (postponed from November 14, 2011). Copies of the notice are now available at no charge from the NLRB website ([www.nlrb.gov](http://www.nlrb.gov)) and from NLRB regional offices ([www.nlrb.gov/who-we-are/regional-offices](http://www.nlrb.gov/who-we-are/regional-offices)). All employers covered by the National Labor Relations Act (“NLRA”) will be required to comply with the new posting requirement. The NLRA applies to nearly all private-sector employers.

The notice must be posted in a conspicuous place where other government notices are posted and where employees may easily view it. In addition to the physical posting, the rule requires every covered employer to post the notice on an internet or intranet site if personnel rules and policies are customarily posted there. The notice must be posted in English and in another language if at least twenty percent of employees are not proficient in English and speak another language.

Failure to post the new notice may be considered an unfair labor practice under the NLRA. Employers should consult legal counsel with any questions regarding this new requirement.

**IRS Mileage Rate Unchanged.**

The Internal Revenue Service (“IRS”) has maintained its standard mileage rate at 55.5 cents per mile for business miles driven in 2012.