

## Employer Alert For 2012 Ready Or Not Here It Comes!

By **Christine A. Page, Esq.**

**A**s anticipated, Governor Brown has joined forces with the State legislature to impose substantial additional obligations on employers as well as authorize additional damages and penalties for violation of existing employment laws. These laws will go into effect on January 1, 2012, so beware!

Of the dozen new laws affecting employers, the following are game changers:

### **Misclassification of Employees as Independent Contractors**

Leaving no doubt that California is getting serious about cracking down on independent contractor misclassification, Senate Bill 459 imposes significant additional penalties on employers who “voluntarily and knowingly” misclassify. Each violation can subject an employer to a civil penalty of between \$5,000 and \$15,000 and an employer found to have engaged in an unlawful “pattern or practice” can incur up to \$25,000 for each misclassification. A licensed contractor guilty of willful misclassification will be referred to the Contractors’ State License Board for mandatory disciplinary proceedings.

The more controversial aspect of the bill takes a “scarlet letter” approach, requiring employers found guilty of willful misclassification to prominently disclose their violation on the company website for one year and provide contact information to the Labor and Workforce Development Agency for any other independent contractors who believe they have also been misclassified. Those without a website must post the information in the company’s offices in an area accessible to all employees and the general public.

Given a number of ambiguities in the language of the bill, it remains to be seen whether the “willful” standard will open the floodgates to more litigation, including class and mass action claims. Nevertheless, employers are strongly advised to review their classifications and, if doubts remain, seek legal advice that may provide a good faith defense against future charges.

### **The Wage Theft Prevention Act**

Dramatically named, Assembly Bill 469 adds several new Labor Code provisions, and amends others, that substantially increase penalties for violation of existing wage and hour laws. It also adds Labor Code Section 2810.5 which will require employers to make the following written disclosures to nonexempt employees at the time of hire: rate of pay including overtime rate; basis of pay (hourly, piece, commission, etc.); allowances (meal, lodging, etc.) claimed by the employer; paydays; employer “dba” and contact information; and workers’ compensation carrier contact information. Employers must also notify employees within seven days of any change in the foregoing information unless it is disclosed on the employee wage statements.

If you are not currently providing this required information at the time of hire, we urge you to modify your practices immediately to avoid claims brought by plaintiffs’ attorneys looking for easy targets of wage and hour violations.

### **Paid Medical Coverage During Pregnancy Leaves**

Employers with group health plans will now be required to maintain and pay

for coverage for up to four months during pregnancy leave. An employer can seek to recover the premium costs from the employee under very limited circumstances.

### **Written Contracts for Commission-Paid Employees**

Beginning January 1, 2013, all employers, whether in California or out-of-state, will be required to have written contracts with their California employees who are paid on a commission basis. This includes details regarding the method of calculating commissions and the terms and conditions for payment.

### **Employee Credit Checks**

The legislature has now limited the ability of employers to conduct credit checks of applicants and employees by specifying a limited number of positions that qualify for this type of scrutiny. Generally, applicants and employees in executive positions or who have access to company bank accounts can be subjected to a credit check.

If you have questions regarding these new obligations and restrictions, or any other employment matter questions, please contact Christine Page at (310) 393-4000 or via email at [cpage@gilchristutter.com](mailto:cpage@gilchristutter.com).



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