

January 2017 Employment Law Notes



From the desk of Diane Aqui, Smith Dollar, PC

JANUARY 2017

Dear Clients and Friends: The new year has arrived, and while the changes and developments in California employment law are not as burdensome as some prior years, compliance is still required. As always, call or e-mail me with any questions or concerns.

Regards, Diane

“ALL-GENDER” RESTROOMS

Single-user restrooms must be “all-gender”- Effective March 1, 2017, single-occupancy rest rooms may no longer be designated as male or female. An “all gender” sign needs to replace previous signage.

Action: Replace existing signs now.

INCREASE IN MINIMUM WAGE

As of January 1, 2017, minimum wage increases to \$10.50 an hour for employers who have more than 25 employees and employers with 25 or fewer employees are required to pay \$10.00 an hour. Note that this also affects the salary that exempt employees are required to be paid: For more than 25 employees, exempt employees need to be paid at least \$43,680.00 per year; for employees with less than 26 employees, exempt employees need to be paid \$41,600.00 per year. For now, the new DOL rule which had been set to be effective as of December 1, 2016, increasing the federal minimum wage to \$47,476.00 per year, is put on hold. It is likely that this “hold” (a “preliminary injunction” in legal terms) will be indefinite due to the new Presidency.

Action: Ensure all employees are at the correct wage rate.

WORKERS COMPENSATION INSURANCE OPT-OUT

Prior law was very unclear as to when business owners could opt out of workers compensation coverage (i.e., the ownership requirements varied from insurance company to insurance company, ranging from 1% to 10%, and upwards). Effective January 1, 2017, opt-outs are available only when the employee is an officer and owns at least 15% of corporate stock, LLC membership, or partnership interest. Written waivers are required and are available from your insurance company.

Action: Contact your workers compensation insurance company to ensure that all owners meet the 15% requirement, and obtain written waiver forms.

NEW NOTICES REQUIRED FOR EMPLOYEES

Employers must provide written notice to new employees of the time off and accommodations rights protecting victims of domestic violence, sexual assault and stalking under Labor Code sections 230 and 230.1. The Labor Commissioner is required to develop a sample notice before July 1, 2017, and employers do not need to comply until this is done.

Action: Nothing for now; We will update when the notice is developed.

Employers must also now provide written notice to employees that they may be eligible for the California Earned Income Tax Credit, in addition to the federal EITC. This notice must be provided within one week of the employer providing the employee their W-2.

Action: Provide the required notice with the employees' W-2 for year ending 2016. If your payroll company cannot provide the notice language, please contact me.

CELLPHONES AND DRIVING

Most employers have already developed policies prohibiting employees' use of cellphones for texting and talking while driving to comply with California law. However, effective January 1, 2017, drivers are no longer allowed to hold their cellphones in their hands for any reason, including the use of GPS apps. For those employees who drive throughout their work day, employees should be provided with a device that mounts the phone on the dashboard/console, and instructed to preload driving directions. With the phone mounted, drivers are allowed to touch it once to "activate or deactivate a feature or function . . . with the motion of a single swipe or tap of the driver's finger."

Action: Provide cellphone mounting devices for all employees required to drive, and update your policies regarding the use of cellphones while driving.

WAGE STATEMENTS FOR EXEMPT EMPLOYEES

There is now clarification that itemized wage statements for exempt employees do not need to show "total hours worked".

Action: No action required.

WORKPLACE SMOKING AND VAPING

Current law prohibits smoking of tobacco products in an enclosed space at a place of employment. Labor Code Section 6404.5 has expanded the definition of "smoking" to include electronic smoking devices. Enclosed spaces are defined as lobbies, lounges, waiting areas, elevators, stairwells and restrooms. While the fines for a violation are fairly low (\$100.00 to \$500.00 payable to the enforcing agency), violations may also be the basis for a civil lawsuit under the Private Attorney Generals Act, which provides for additional penalties and attorney fees.

Action: Employers need to be aware of the potential for litigation, and enforce no smoking policies, including e-cigs and vapor pens.

STATE SPONSORED RETIREMENT SAVINGS PROGRAM

Effective January 1, 2017, the California Secure Choice Retirement Savings Program has been put into action. For those employers who have at least 5 employees and who do not offer a private, qualified retirement savings plan, this law requires employers to deduct contributions from employee paychecks (3% of wages) and put those funds into the California Secure Choice Retirement Savings Program. Depending on the size of the employer, these deductions are slated to begin over the next 12-36 months: Small employers have 36 months to put this plan into place; 24 months for employers with more than 50 employees; 12 months for employers with more than 100 employees. The EDD will be developing an employee information packet, and employees may opt out, if they choose.

Action: Nothing for now; We will update as needed.

LEGALIZATION OF RECREATIONAL MARIJUANA

I had previously provided an update regarding this new law, which theoretically went into effect the day after Election Day. The main take away is that employers can still enforce a drug free workplace policy. However, because a positive marijuana test is not definitive evidence that an employee is under the influence of marijuana, nor is it in and of itself unlawful, employers may need to rely on objective signs of marijuana use when making employment related decisions.

Action: Update drug policies to include the prohibition of both medical and personal marijuana, including the possession, use, and being under the influence of marijuana. Consideration should also be given to updating grooming and appearance policies to include and prohibit the odor of marijuana and tobacco.

SICK LEAVE

I had also previously provided an update regarding California's paid sick leave policy. As a reminder, many local counties and municipalities have enacted their own sick leave laws that are more burdensome than California's (for example, San Diego, Los Angeles County, San Francisco, and Oakland).

Action: Employers who have locations outside Sonoma County need to review the specific requirements for those localities. For those employers wanting only one uniform plan that covers all locations, a PTO plan may be the way to go.

CONTACT INFORMATION

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