

# Legislative Brief

## New Laws for California's Workers in 2012

About two dozen state employment laws will take effect Jan. 1, according to a list published by the California Chamber of Commerce. Some of these laws will prohibit discrimination against employees on the basis of their gender expression or genetic information, require more employers to continue health coverage for mothers on pregnancy disability leave, and prohibit some employers from doing credit checks on certain types of workers or job applicants.

Many of the laws are designed to protect California workers but will put additional burdens on employers at a time when the economy and job market remain weak. On the plus side for employers, a group of five laws supported by the chamber could lower their workers' compensation costs and streamline some notices and procedures.

A lawyer for the chamber, which publishes an annual rundown of new state workplace laws, says this year's list is longer than the past couple of years. "Not every one of the new laws applies across the board to every employer, but if you take just a couple of laws that apply to most employers and add them up over the number of employees they have, it's going to create more administrative chores and more responsibility for the employer," says Susan Kemp, the chamber's senior employment law counsel.

### Two Laws with Wide Impact

The two laws that will affect the most employers, Kemp says, are:

-- **AB469** requires employers to provide workers who are not exempt from overtime a notice at the time of hire that includes certain pay details including their rate of pay and whether it's hourly, salary, commission-based or otherwise; any allowances claimed as part of the minimum wage including meal and lodging allowances; the regular payday; and the name, address and phone number of the employer and of the employer's workers' comp insurer.

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Most employers already provide this information in various places such as pay stubs and workplace posters. Starting next year, they will have to put it all in one notice given to new employees. The California labor commissioner will provide a template, but "each notice will be unique to that employee," Kemp says.

If any information in the notice changes, the employer generally must notify each nonexempt employee, in writing, within seven calendar days. This law also increases penalties for wage violations and makes additional changes regarding collection of such penalties, including an increase in the statute of limitations, the chamber says.

-- **SB299** requires all employers with five or more employees to maintain health coverage under a group health plan for an eligible female employee who takes pregnancy disability leave for up to four months. The benefits have to be at the same level as if the employee had continued working during the leave period.

If the employer splits the cost of health insurance with employees 50-50, "that's what you have to do when they are on pregnancy disability leave," Kemp says.

Current law requires employers with 50 or more employees to provide continued health benefits for new moms, for a maximum of 12 weeks. So the new law expands both the number of companies that must provide this coverage and the maximum length of time they must provide it. However, increasing the maximum coverage period to four months does not mean all moms will get that much coverage. It will still be up to the mother's health care provider to determine how long she can be on pregnancy disability leave before and after the birth, Kemp says.

### Challenge for Employers

Stephen Hirschfeld, an attorney with Curiale Hirschfeld Kraemer who represents employers, says another new law, **SB459**, will pose challenges for some clients. It provides new penalties of \$5,000 to \$25,000 for the "willful misclassification" of employees as independent contractors.

"Lawyers and government agencies in some cases are independently challenging the use of independent contractors and whether they are really independent contractors or employees. What this does is increase the stakes by increasing the penalties.



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This will incentivize plaintiff's lawyers to take these cases" on behalf of employees, Hirschfeld says. He says another significant new law is **AB22**. It prohibits employers, except certain financial institutions, from getting and using credit reports on most job applicants and employees, excluding certain positions including managerial positions exempt from overtime, certain law enforcement jobs and some positions that require financial duties or access to proprietary information.

Because most companies won't disclose anything but "name, rank and serial number" about their former employees, "a lot of employers are doing fairly extensive background checks on new hires," and that includes criminal and credit checks, Hirschfeld says. "Most of my clients pretty routinely do credit checks for applications for virtually all positions." Limiting their ability to do credit checks will take away an important screening tool, he says.

Attorney David Lowe, a partner with Rudy, Exelrod, Zieff & Lowe who represents employees, says the intent of the bill was good for workers. "Allowing someone to discriminate on the basis of credit history, in this economy," is unfair, he says. But the exceptions "are so broad, it's going to limit the effectiveness of the bill."

Lowe says **AB1396**, which requires commission plans to be in writing, will benefit both employers and employees. "We handle a lot of cases involving unpaid commissions. It's a good idea to require the commission plan to be in writing. It reduces litigation over compensation," he says. Lowe also applauds **AB877**, which will prevent employers from discriminating against employees based on their gender expression. Existing law prevents discrimination against employees based on their gender and gender identity. The new law would also protect employees against workplace discrimination based on the way they express their gender through their dress and behavior.

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