



Fall 2011-3

California Legislative Changes – Part 2

New Wage Payment/Information Violations of the Labor Code

The California Legislature also made additional changes to the Labor Code, signed into law by Governor Brown.

- As of January 1, 2012 an employer must, at the time of hire, provide every employee with a written notice of 1) the rate(s) of pay and the basis for pay (hourly, salary, piece rate, commission, etc.); 2) allowances, if any taken as part of the minimum wage (e.g., meal or lodging allowances); 3) the regular payday; 4) the name of the employer (including any "dba"); 5) the physical address of the employer's main office or principal place of business and mailing address, if different; 6) the employer's telephone number; 7) the name, address and telephone number of the employer's workers' compensation insurance carrier; and 8) any other information the Labor Commissioner deems material and necessary. The Labor Commissioner is to prepare a template to be made available to employers.

- An employer who pays less than the minimum wage shall be subject to paying restitution wages to the employee.

- Willful violation of certain wage statutes or orders or willful failure to pay a final court judgment or a final order of the Labor Commissioner for wages due will be a misdemeanor.

- The period during which the Labor Commissioner can commence a collection action has been extended from one year to three years.

All employers must be prepared to provide written notices with the wage and other required information to new employees as of January 1, 2012. We will let you know when the Labor Commissioner template is available.

Willful Misclassification of Employees as Independent Contractors

This new law makes willful misclassification, defined as avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor, unlawful. It is also unlawful to charge such an individual for equipment, materials, etc. for which it would be a violation of law (because the employer would be required to provide the items) if the individual were not misclassified.

Civil penalties for such violations range from \$5000 – \$15,000 and then \$10000 - \$25,000 if there is a pattern and practice of such violations. Anyone who is found to have violated these provisions will be required to display a notice that enumerates the violations and notifies anyone who believes he/she is misclassified with information for contacting the Labor and Workforce Development Agency. The notice must be signed by an officer and be posted for one year.

All employers should carefully review the basis for classifying anyone as an independent contractor and re-classify individuals as employees if appropriate under the circumstances.

Written Commission Agreements

By January 1, 2013, every employer who pays employees for services rendered in California on a commission basis must have a written agreement with the employee which sets forth the basis on which commissions are to be paid. The employer must give a signed copy of the agreement to every employee to whom commissions are to be paid and obtain a signed acknowledgment of receipt from each such employee. For this purpose commissions do not include short-term productivity bonuses such as those given to retail clerks and will generally not include bonus or profit-sharing plans unless they are tied to a fixed percentage based on sales or profits as compensation for work performed.

Employers currently without written agreements with their commissioned employees should be prepared to provide these on or before January 1, 2013. Those employers with current agreements need to review them to ensure that they meet the above requirements and that they have signed acknowledgments from all employees who have received them.

For more information or assistance with the implementation of these new requirements contact Jeanne Flaherty at Employer's Legal Advisor, Inc.



Jeanne Flaherty is the President and Managing Attorney of Employer's Legal Advisor, Inc., which represents and advises employers on all employment matters. The firm specializes in conducting employment practices compliance reviews and advising employers on day-to-day legal issues in the workplace.