



Fall 2012

CALIFORNIA: New Employment Laws for 2013 – Part 1

The California Legislature has once again passed, and Governor Brown has signed, a number of new requirements for employers in California. All of the following new laws are effective January 1, 2013 unless otherwise noted.

Personnel Files

Personnel records must be made available for inspection by an employee, a former employee, or his or her representative not later than 30 days after a written request (can be extended by five days by agreement). Additionally, a copy of the records must be provided (on written request) within the same timeframe. The employer may charge the actual cost of copying the records. Certain documents (e.g., letters of reference) are excluded and the name(s) of any nonsupervisory employee in the records may be redacted. An employee is limited to one request to inspect/copy per year and a representative is limited to 50 requests on behalf of individual employees per month. The employer may provide a form for this purpose and can designate the representative to whom requests should be made.

Employers can expect numerous requests from employees and their representatives to review and receive a copy of their personnel files. It will be helpful to designate a representative and use an employer form.

Social Media

An employer may not require an employee or applicant to 1) disclose a username or password for the purpose of accessing personal social media (except for those kept on employer-owned devices); 2) access personal social media in the presence of the employer (“shoulder surfing”); or 3) divulge any personal social media (unless the social media is reasonably believed to be relevant to an investigation or allegations of employee misconduct or a violation of law.

Do not ask employees or applicants for personal usernames or passwords or ask employees or applicants about personal social media postings. However, you

should retain all usernames or passwords used on Company computers or other electronic devices.

Fair Employment and Housing Act (FEHA) Changes *Religious discrimination*

The definition of “religious creed” in FEHA has been expanded to include “religious dress and grooming practices”. “Dress” will be construed broadly and will include clothing, head or face covering, jewelry and artifacts. “Grooming” includes all forms of head, facial and body hair. As with all discrimination based on religion, the employer must reasonably accommodate the employee unless doing so creates an undue hardship. The statute specifically states that segregating from other employees or the public is not a reasonable accommodation of a religious dress or grooming practice.

Definition of “sex”

The definition of “sex” includes breastfeeding or medical conditions related to breastfeeding.

Fair Employment and Housing Commission (FEHC)

This separate agency has been eliminated and has been replaced with an Employment and Housing Council within the Department of Fair Employment and Housing (DFEH). Additionally the DFEH will now bring direct civil actions (rather than bringing them before the FEHC) after mandatory dispute resolution.

Particularly with regard to possible religious discrimination you need to be prepared for requests to wear certain jewelry or artifacts and maintain certain facial or body hair.

For more information or assistance on implementing any of the above please contact Jeanne Flaherty.



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.