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CALIFORNIA: New Changes – New Forms

For employers to properly implement recent statutory and regulatory changes, new forms should be used.

I-9

The Department of Homeland Security has issued a new I-9 form. Effective May 7, 2013 employers may no longer use any other version of the I-9 for new hires or for reverification. [Employers are not required to have current employees complete a new form.] This is now a two-page form. Completion of the employee's phone number and e-mail address are optional. The employee also need not include his/her social security number unless the employer uses E-Verify. The Instructions, which must be provided to the employee along with the List of Acceptable Documents, are more detailed than in previous versions. The new I-9 can be found at <http://www.uscis.gov/files/form/i-9.pdf>.

Request to Inspect/Copy Personnel Records

As noted in the December 10, 2012 **Alert** the Labor Code has been revised to allow employees, including former employees, (or their representatives) to inspect or request a copy of their personnel records. The employer may use a form for such requests. The form should include: the name of the person making the request; the employee (or former employee) for whom the request is made; whether the request is for inspection or a copy; if a former employee is requesting the copy by mail; the costs for which the employer can charge for copies and/or mailing; and a reference to the California Labor Code Section 1198.5. If you would like a sample form please contact Jeanne Flaherty (contact information below).

Written Commission Agreements

As of January 1, 2013 employers must have a written agreement, acknowledged by the employee, for all employees who are paid (in full or in part) on a commission basis. This should include: the basis on which commissions are paid; what the employee is required to do to receive a commission; when and how commissions will be paid; and the effect of termination of the employee. Since these agreements will vary widely by employee no one form can be used for all employers. However, if you would like a copy of a Checklist for Written Commission Agreements contact Jeanne Flaherty.

Leaves of Absence

In conjunction with the new California pregnancy disability regulations, the Department of Fair Employment and Housing

has issued a Certification of Health Care Provider for Pregnancy Disability Leave, Transfer and/or Reasonable Accommodation. This form can be found at:

<http://www.dfeh.ca.gov/res/docs/FEHC%20Pregnancy%20Regs/Certification%20for%20Health%20Care%20Provider%20Pregnancy%202013.pdf>

This form can be used in lieu of a federal Family and Medical Leave Act (FMLA) Certification of Health Care Provider form which has been modified to meet California requirements under the California Family Rights Act (CFRA) and pregnancy leave, transfer or accommodation.

With regard to other leaves under the FMLA and/or CFRA, new regulations on military leaves for a qualifying exigency or to care for a current or former servicemember include new federal Certification forms for these types of leaves. These can be found at: <http://www.dol.gov/whd/forms/>. Unlike leaves for an employee's own or a family member's serious health condition there is no California law on these military-related leaves so the federal forms are acceptable for use. The Notice of Eligibility and Rights & Responsibilities form (used for both FMLA and CFRA leaves) must be modified to reflect the requirements of both federal and California law. However, these forms may need to be updated to reflect the new definitions and other requirements for military-related leaves. We do not recommend using federal forms (without modification) for leaves that encompass the FMLA, CFRA and/or California Pregnancy Disability Leave (CPDL).

Use of appropriate forms can be very helpful in the administration of employment-related issues. However, it is important to ensure that the proper forms are used when required and that employer-created forms meet legal requirements.

For more information or assistance on forms 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.