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December 2013

Reporter

Employment Law

by Kelly O. Scott, Esq.

New California Employment Laws for 2014

With another year comes another new set of laws for California employers; what else would you expect from sending a bunch of legislators to Sacramento? Here is an overview of the highlights (or lowlights, depending on your point of view) of 2014's offerings which are generally applicable to all California employers. Unless otherwise noted, all laws are effective January 1, 2014.

Assembly Bill 442 amends Labor Code Sections 1194.2 and 1197.1 by expanding certain penalty and restitution provisions relating to the failure to pay minimum wages. The bill creates a liquidated damages provision that requires payment by the employer of an amount equal to the amount of unpaid wages, plus interest. The law will also apply to individual officers, agents, employees and employers who pay or cause to be paid to any employee a wage less than the minimum wage.

Senate Bill 400 amends the Fair Employment and Housing Act (FEHA) by adding victims of stalking, sexual assault and domestic violence as protected categories. As amended, FEHA will prohibit any adverse actions by the employer because of the employee's status as a victim and will require the employer to provide reasonable accommodations for victims. The bill further creates a private right of action for any aggrieved employee.

Assembly Bill 263 was one of many laws passed by the California Legislature addressing immigration issues. AB 263 amends the Labor Code to prohibit "unfair immigration-related practices." Specifically, AB 263 will prohibit an employer from

retaliating or taking adverse action against an employee or applicant for employment because the employee or applicant engaged in protected conduct. "Unfair Immigration-Related Practice" is defined as, among other things, requesting more or different documents than are required by the federal government, using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required by the federal government, threatening to file or filing a false police report, or threatening to contact or contacting immigration authorities. Further, the bill creates a rebuttable presumption that an employer has engaged in an unfair immigration-related practice when such actions occur within ninety days of the employee's exercise of a right protected by the Labor Code or a local ordinance applicable to employees. The new law provides for civil penalties up to \$10,000 per employee, and requires the court to order the suspension of government licenses issued to the employer. A companion statute, **Senate Bill 666**, amends the Business and Professions Code and Labor Code to address many of the same issues, and further allows for the possibility of disbarment to a member of the State Bar who engages in such practices. In addition, **Assembly Bill 524** amends Penal Code Section 519 to provide that the threat of reporting the immigration status of an individual, relative or family member may induce fear sufficient to constitute criminal extortion.

Senate Bill 390 amends Labor Code Section 227 to allow the Labor Commissioner to pursue criminal prosecution and fines in connection with an employer's failure to remit payroll taxes to the proper agency. The new law states that a violation of \$500 or less will qualify as a misdemeanor; a violation of more than \$500 will be

Upcoming 2014 Seminars at ECJ

Thursday, January 30, 2014

New Laws for 2014 by Kelly O. Scott, Esq. - 8:30 a.m. - 9:30 a.m.

HR's Role in Protecting Trade Secrets by Kelly O. Scott, Esq. - 10:00 a.m. - 11:00 a.m.

Please contact Brandi Franzman at bfranzman@ecjlaw.com for registration information.

Kelly O. Scott will also present New Laws for 2014 as a keynote speaker at the PHRA® 2014 Annual Legal Update on January 9, 14, and 16

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considered a felony. Violations are punishable with jail time of not more than one year, fines of not more than \$1,000, or both.

Senate Bill 435 amends Labor Code Section 226.7 to expand penalties available for an employer's failure to provide meal or rest periods to include recovery periods. "Recovery periods" are defined as a cool down period afforded an employee to prevent heat illness. Recovery periods, as well as meal and rest breaks, can be proscribed by statute, regulation, standard or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The penalty for failure to provide the recovery period is one additional hour of pay at the employee's regular rate of pay for each day the recovery period is not provided. The law does not apply to persons exempt from meal or rest or recovery period requirements.

Assembly Bill 10 amends Labor Code Section 1182.12 to increase the minimum wage in California. Specifically, the minimum wage will be increased to \$9.00 an hour on July 1, 2014, and increase to \$10.00 an hour on January 1, 2016. The minimum wage hike represents a 25% increase over the current rate of \$8.00 an hour. Following the increases, California will have the highest minimum wage rate in America, assuming other states do not provide for significant increases in the near future. California currently has the eighth highest minimum wage. The State of Washington has the highest minimum wage at \$9.19 an hour (and will raise its minimum wage to \$9.32 on January 1, 2014). Only 19 states and the District of Columbia have set minimum wages higher than the federal mandate of \$7.25 an hour. There are 10 states that annually adjust the minimum wage based on inflation and the Consumer Price Index.

Senate Bill 292 amends FEHA in response to *Kelley v. Conco Companies*, a 2011 California Court of Appeal same-sex harassment decision that created some confusion regarding a plaintiff's evidentiary requirement for proving a hostile work environment sexual harassment claim by implying that a plaintiff is required to prove sexual desire to prevail on such a claim. This reading of the *Kelley* decision contradicts the 2006 California Court of Appeal decision in *Singleton v. United States Gypsum Co.*, and ignores language in the leading United States Supreme Court decision on same-sex sexual harassment, *Oncale v. Sundowner Offshore Services, Inc.* SB 292 amends FEHA to specifically state that sexually harassing conduct need not be motivated by sexual desire. Sexually harassing conduct is always wrong, regardless of motivation.

Assembly Bill 556 amends the FEHA to add military and veteran status as protected categories. As most employers are aware, FEHA protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation. Assembly

Bill 556 adds "military and veteran status" to the list of categories protected from employment discrimination under FEHA. The new law provides an exemption for an inquiry by an employer regarding military or veteran status for the purpose of awarding certain veteran's preferences permitted by law, such as those offered to Vietnam-era veterans.

Senate Bill 462 amends Labor Code Section 218.5 to state that, in an action brought for the non-payment of wages, fringe benefits or health and welfare or pension fund contributions, a prevailing employer may only be awarded attorney's fees and costs if a court finds that the employee brought the action in bad faith. Prior to the amendment, Labor Code Section 218.5 required a court to award reasonable attorney's fees and costs in such an action to the prevailing party if any party requested attorney's fees and costs upon the initiation of the action.

Assembly Bill 11 amends Labor Code Section 230.4. Existing law requires employers with 50 or more employees to allow volunteer firefighters to take up to 14 days off per year for training. Assembly Bill 11 extends the same benefit to reserve peace officers and emergency rescue personnel. Employer retaliation is, of course, strictly prohibited and the Division of Labor Standards Enforcement is authorized to pursue complaints.

Senate Bill 770 amends Labor Code Sections 2708 and 3300 through 3302 to expand existing Paid Family Leave law. Specifically, the law will now provide family temporary disability leave to care for a seriously ill grandparent, grandchild, sibling and parent-in-law in addition to a child, spouse, parent or domestic partner, or to bond with a minor child after birth or adoption. The law becomes effective July 1, 2014.

Senate Bill 288 adds Labor Code Section 230.5 to protect victims of various specific offenses. Specifically, existing law prohibits employers from discriminating or retaliating against an employee who is a victim of a crime for taking time off to appear in court, or an employee who is a victim of domestic violence or a victim of sexual assault for taking time off to seek or obtain relief. SB 288 adds a list of offenses for victims, or those who testify at the request of victims, to allow such persons to take time off work to appear in court. The offenses are: vehicular manslaughter, child abuse, felony domestic violence, felony abuse of an elder, felony stalking, solicitation for murder, serious felonies, hit and run and felony driving.

Senate Bill 496 expands whistleblower protection to prevent employers from retaliating against an employee because the employer believes the employee has disclosed or may disclose information to a government or law enforcement agency concerning a violation of, or noncompliance with, a local rule or regulation. The new law also prohibits retaliation based on an employee's refusal to participate in an activity that would result in a violation or noncompliance with a local rule or regulation.

If you have any questions regarding this bulletin, please contact Kelly O. Scott, Esq., Editor of this publication and Head of ECJ's Employment Law Department, at (310) 281-6348 or kscott@ecjlaw.com. If one of your colleagues would like to be a part of the Employment Law Reporter mailing list, or if you would like to receive copies electronically, please contact Brandi Franzman at (310) 281-6328 or bfranzman@ecjlaw.com.

■ **Registration Time:**

8:15 a.m.

■ **Seminar Time:**

8:30 a.m. to 9:30 a.m.
(continental breakfast provided)

■ **Cost:**

\$35 per person

*What attendees
are saying ...*

"Kelly Scott was fabulous. His good-natured presentation was both informative and entertaining. His presentation style enabled the attendees to participate and I believe retain the presentation materials."

■ **Registration Time:**

9:45 a.m.

■ **Seminar Time:**

10:00 a.m. to 11:00 a.m.
(continental breakfast provided)

■ **Cost:**

\$35 per person

The seminar ...

"Was fantastic and extremely informative. The delivery by Kelly Scott was outstanding ... the touch of comedy always helps. Looking forward to the next one."

■ New Laws for 2014

Presented by *Kelly O. Scott, Esq.*

Thursday, January 30, 2014 at Ervin Cohen & Jessup LLP

Change is good... unless you are an employer in the State of California. Over the last year the legislature has been busy changing the landscape in which California employers do business and, contrary to what your mother may have told you, what you don't know CAN hurt you! We will review the most important developments that will have an immediate impact on the way you do business. Don't miss this opportunity to stay on top of the changes—before the changes get on top of you!

Register by Monday, January 27th. Contact Brandi Franzman at bfranzman@ecjlaw.com or (310) 281-6328 for registration information. Space is limited. Parking validation will be provided.

This seminar qualifies for 1.0 hours of Continuing Professional Education credit for Accountants.



Kelly O. Scott, Esq. heads ECJ's Employment Law Department and has over 25 years of experience in wage and hour, wrongful termination, harassment, discrimination, retaliation, class action, disability, medical leave, investigation, compliance training and litigation matters. Mr. Scott was named Best Employment Lawyer in Southern California for 2010 by the 5W Report, and was selected for inclusion in Southern California SuperLawyers®, published in Los Angeles magazine, for 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006 and 2004. Mr. Scott maintains a Martindale-Hubbell peer rating of AV.

■ HR's Role in Protecting Trade Secrets

Presented by *Kelly O. Scott, Esq.*

Thursday, January 30, 2014 at Ervin Cohen & Jessup LLP

Like it or not, H.R.'s role in protecting confidential information and trade secrets is essential to the survival of the business. The key, of course, is knowing what can be protected and how best to protect it. This session will provide innovative guidelines for evaluating confidential information and trade secrets and maintaining the confidentiality of key information. From hiring through termination, we will discuss a variety of preventative measures, including effective documentation, practical procedures and easily implemented tools and safeguards. The limitations and proper use of non-competition provisions will also be outlined.

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