

California Labor Law in the Year 2000

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The new millennium will bring significant changes to labor and employment law in California. On January 1, 2000, several new laws will go into effect which will dramatically change the way employers conduct business in this state. Below is a very brief overview of many of these new laws.

Overtime

Daily overtime has been reinstated. Employers must pay time and a half to non-exempt employees who work over 8 hours in a workday, over 40 hours in a workweek, or the first 8 hours on the 7th workday of one workweek. Employers must pay double time to non-exempt employees who work over 12 hours in a workday, or over 8 hours on the 7th workday of one workweek. [AB 60].

Alternative Workweek Schedules

Employers may avoid paying daily overtime if they have a valid alternative workweek schedule ("AWS"). For most employers, the AWS may be no more than 10 hours per workday and 40 hours per workweek. Employers must pay time and a half to non-exempt employees who work in excess of the AWS up to 12 hours in a workday, or over 40 hours in a workweek. Employers must pay double time to non-exempt employees who work in excess of 12 hours per workday, or in excess of 8 hours on those workdays beyond the regularly scheduled AWS. In order to have a valid AWS, there must be a secret ballot election, at least two-thirds of the work unit must vote to adopt the AWS, and the election results must be reported to the government. Employers cannot reduce an employee's hourly pay in connection with the AWS. Employers shall make reasonable efforts to find a schedule not to exceed 8 hours in a workday to accommodate any employee who was eligible to vote in the AWS election but who is unable to work the AWS. Employers shall be permitted to provide a schedule not to exceed 8 hours in a workday to accommodate any employee hired after the AWS election and who is unable to work the AWS. Employers shall explore reasonable means of accommodating the religious beliefs of employees that conflict with the AWS. [AB 60].

White Collar Exemptions

The minimum level of compensation to qualify for "white collar" overtime exemptions has increased to a salary equivalent of no less than two times the state minimum wage for full-time employment, which is currently \$23,920 per year. Also, more than 50% of the employee's work time must be devoted to exempt duties in order to qualify for these exemptions. [AB 60].

Makeup Time

If an employer approves an employee's written request to make up time lost, the hours of makeup time may not be counted toward the overtime requirements, unless the employee works in excess of 11 hours in one workday or 40 hours in one week. However, employers are prohibited from soliciting any employee to make up time within the same week. [AB 60].

Meal Periods

If an employee works more than 5 hours, the employer must provide a meal period of not less than 30 minutes. If the work period is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee. If an employee works more than 10 hours, the employer must provide a second meal period of not less than 30 minutes. If the work period is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. [AB 60].

Sick Leave

Employers are not required to provide paid sick leave to their employees. However, if they do provide employees with paid sick leave for their own illness, employers must also offer paid sick leave to the employee to tend to the illness of the employee's child, parent, or spouse. Employers may limit the amount of this sick leave to one-half of the employee's annual sick leave entitlement. Employers are not required to advance unaccrued sick leave to employees. This law does not affect PTO policies that do not fit the definition of paid sick leave. [AB 109].

Independent Contractors

The Fair Employment & Housing Act ("FEHA") has been amended to prohibit harassment toward persons providing services pursuant to a contract, such as independent contractors. [AB 1670].

Layoff Policies

Employers may not select employees for layoff based on their salary if it may result in older employees being disproportionately laid off compared to younger employees. [SB 96].

Off-Duty Conduct

Employees may file a claim with the Labor Commissioner for loss of wages due to employment decisions based upon the employee's lawful conduct during non-working hours. [AB 1689].

Sexual Orientation

The FEHA has been amended to prohibit any discriminatory employment practice based upon the sexual orientation of the applicant or employee. [AB 1001].

Time Off For Court Appearances

Employees must be allowed to take time off from work to appear in court as a juror or witness. Employers must also permit victims of crime or domestic violence to take time off to appear in court. This time off may be without pay. [Labor Code § 230].

Conclusion

California employers should conduct a thorough audit of their policies and procedures to ensure that they comply with all of these new laws. Employers may want to have experienced labor counsel assist them in reviewing these laws in order to avoid liability for illegal employment practices.

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