



NEW CALIFORNIA EMPLOYMENT LAWS FOR 2015

by Laura K. Sitar

It's time again to review the employment related laws in California which take effect in the coming year. Unless noted otherwise, these laws take effect January 1, 2015.

MANDATORY REPORTING TO OSHA

AB 326 amends current law requiring a company to immediately report a severe occupational injury, illness or death to the Division of Occupational Safety and Health Association (OSHA) by phone or telegraph. The bill very simply replaces the ability to report by telegraph with email. An employer who violates the immediate reporting requirement may be assessed a civil penalty of not less than \$5,000. Employers continue to be required to report any occupational injury or illness which results in lost time beyond the date of injury or illness, or which requires medical treatment beyond first aid, within 5 days after the employer learns of the injury or illness.

PROHIBITION AGAINST DISCRIMINATION AND HARASSMENT OF UNPAID INTERNS AND VOLUNTEERS

AB 1443 extends the current anti-discrimination and harassment provisions of the Fair Employment and Housing Act (FEHA) to unpaid interns and volunteers. The bill prohibits discrimination in the selection, training, termination or other terms or treatment of any person in an unpaid internship on the basis of any legally protected classification (e.g. race, sex, age, etc.). It similarly prohibits the harassment of unpaid interns or volunteers based on any protected classification.

PAID SICK LEAVE

AB 1522 requires California employers to pay up to three days sick pay per year effective July 1, 2015. Employers must permit employees to accrue paid sick leave at a rate of at least one hour of paid sick leave for every 30 hours worked. Exempt employees are deemed to work 40 hours, unless the employee's normal work week is less than 40 hours.

The employer may limit the use of paid sick days to 24 hours or three days in each year of employment. Employees who work 30 or more days within a year from commencement of employment are entitled to accrue sick days and are entitled to use accrued sick leave beginning on the 90th day of employment. Employers may set a minimum increment of sick hours to be used at one time, but that minimum cannot be more than two hours.

Sick leave may be used for diagnosis, treatment or preventative care for an employee of that employee's family members. Family members include parents-in-law, grandparents, grandchildren, and siblings. Sick leave may also be used for victims of domestic violence, sexual assault or stalking.

Unused hours must carry over year to year with a permissible cap of 48 hours or six days. However, if employees are given the total amount of sick days that may be used at the beginning of the year, no accrual or carryover is required. Employers are not required to pay employees for accrued unused sick pay at the time of separation from employment.

Employers must provide employees with an itemized statement setting forth available sick leave on the employee's itemized wage statement or separate form each payday. Employers must also display a poster informing employees of their rights in a conspicuous location. Employers must also provide new employee with a written explanation of the law at the time of hiring. The poster and template handout for new employees will be made available by the Labor Commissioner. Arguably these provisions become effective January 1, 2015. Finally, an employer may not retaliate against an employee for exercising the right to use accrued sick time.

PROHIBITION AGAINST DISCRIMINATION BASED ON DRIVER'S LICENSE FOR UNDOCUMENTED WORKERS

AB 1600 extends current anti-discrimination and harassment provisions of the FEHA because the individual holds a driver's license that indicates he or she is undocumented. It further prohibits any employer from requiring that an applicant or employee present a driver's license unless having a driver's license is a requirement of the job.

PROTECTING WORKERS IN THE NEW SUBCONTRACTED SOCIETY

AB 1897 requires a client employer to share all civil legal responsibility and civil liability for the payment of wages and the failure to obtain valid workers' compensation coverage for all workers supplied by certain labor contractors. It amends existing law which prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, of the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided.

TRAINING TO INCLUDE PREVENTION OF ABUSIVE CONDUCT (BULLYING)

AB 2053 amends current law to require that existing sexual harassment training required by AB 1825 include training on the prevention of abusive conduct. AB 1825 currently requires that employers with 50 employees or more provide sexual harassment training to supervisors located in California every two years. Abusive conduct is defined as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive or unrelated to an employer's legitimate business interests." Abusive conduct "may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal and physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance." The law does not prohibit abusive conduct unless it's related to a protected classification under the FEHA. It does make training regarding the subject mandatory for supervisors.

TIME OFF FOR EMERGENCY RESCUE PERSONNEL

AB 2536 expands the current definition of emergency personnel in Labor Code section 230.3 to include an officer, employee or member of a disaster medical responses entity sponsored or requested by the state. Existing law prohibits an employer from discharging or in any manner discriminating against an

employee for taking time off to perform emergency duty as a volunteer firefighter, reserve police officer, or emergency rescue personnel. Existing law further requires an employer reinstate and reimburse an employee who is discharged or in any other manner discriminated against in his or her employment in violation of these provisions.

About the Author:

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation.

Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California.

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