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News You Can Use

HEFFERNAN INSURANCE BROKERS
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Business and Economy

Top 10 California Laws, Regs for 2024

EVERY YEAR, bills passed by the state Legislature and signed into law by the governor take effect, and 2023 was a busy legislative session in Sacramento. The end result is another set of new laws that employers need to stay on top of in the New Year.

1. Sick leave law expanded

A new law that took effect Jan. 1 increased the amount of paid sick leave days California workers are eligible for to five days (40 hours), up from the current three, or 24 hours.

The new legislation applies to virtually all employees in the state. Under the law, businesses have two options for providing sick leave:

Up front: They can provide all five paid sick days up front for the year, and these days can be used immediately.

Accrual: They can build up paid sick leave by either accruing one hour of leave for every 30 hours worked, or providing 40 hours of leave by the 200th day of the year.

2. Pre-employment cannabis screening

SB 700 makes it unlawful for an employer to take adverse employment actions related to hiring, termination, or any other term or condition of employment, or otherwise penalizing the person because of their prior cannabis use off the job and away from the workplace. Employer may still conduct employer-required screening tests in accordance with state law.

Another measure, AB 2188, makes it unlawful for employers to "discriminate" against a person for failing a workplace drug test that only detects inactive cannabis compounds called metabolites.

3. FAIR Plan increases its limits

With more and more California businesses being forced to go to the California FAIR Plan for their property coverage, the market of last resort has increased its commercial property coverage limits to $20 million per location from the previous $8.3 million.

This should bring a semblance of relief to companies located in wildfire-prone areas, who have seen their commercial property insurance non-renewed and who have been unable to find replacement coverage.

4. Workplace violence law

A new law, which takes effect July 1, requires employers with at least one worker to have in place a workplace violence prevention plan, and conduct workplace violence prevention training and keep a log of violent incidents in the workplace.

The prevention plan must include:

- Procedures for the employer to accept and respond to reports of workplace violence.
- Procedures to communicate with employees regarding workplace violence.
- Procedures for responding to workplace violence emergencies.

Employers will also be required to train their workers on the plan and on how to respond to violent incidents or threats of violence.

See 'Non-Competes' on page 2

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2024

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Non-Competes with Employees Now Expressly Illegal

5. Treasury reporting rule

A new Treasury Department rule requires businesses with fewer than 20 employees and less than $5 million in revenue to report ownership and control information to the Financial Crimes Enforcement Network (FinCEN) as part of an effort to cut down on fraud, money laundering and the funding of terrorism that could run through anonymous business entities.

Businesses with more than 20 employees and more than $5 million in sales can qualify for exemptions from reporting.

Companies formed after Jan. 1 will have 30 days to file that information with FinCEN. Companies created or registered to do business before Jan. 1, will have until Jan. 1, 2025 to file their initial beneficial ownership information report.

6. No more non-competes

Under two new laws, non-compete agreements with employees are expressly illegal starting in 2024 and if an employer requires one be signed, it could provide grounds for a lawsuit by the worker.

Here's a rundown of the two laws:

AB 1076 – This law adds new requirements and penalties to existing cases that make it illegal for employers to include non-compete clauses in employment contracts or require an employee to sign a non-compete agreement that doesn't meet exceptions under the law.

The law also requires employers to notify current employees who signed non-compete agreements that they are now void under California law by Feb. 14, 2024. This also applies to former employees who were hired after Dec. 31, 2021.

SB 699 – This legislation bars employers from enforcing a non-compete agreement that is void under state law. Most notably it would make void an agreement signed by an employee out of state who later relocates to California.

It also provides employees and job applicants a private right of action, including awards for injunctive relief, actual damages and attorney's fees, and costs if an employer requires them to sign a non-compete. Additionally, it makes a violation of the statute an act of unfair competition — another possible legal risk.

7. New joint-employer rule

The National Labor Relations Board has issued a final rule that expands the definition of what's considered a joint-employer relationship and increases employers' potential liability.

Under the rule, two or more entities may be considered joint employers if they share one or more employees and they both can determine the workers' essential terms and conditions of employment. If a company is deemed a joint employer with another entity, each can be held liable for labor law violations that the other commits.

The new NLRB rule applies to almost all industries, but will have the most effect on companies that use staffing or temp agencies, firms that are third party employers, and franchisors.

The rule took effect Dec. 26, 2023 on a prospective basis, meaning it applies to any cases filed on or after that date.

8. Reproductive-loss leave law

Starting Jan. 1, workers in the Golden State can take up to five days off for a "reproductive loss," defined as a miscarriage, stillbirth, failed adoption or failed surrogacy experienced by an employee, their spouse or partner.

Under the new law, SB 848, workers are not required to take all five days consecutively, but they must use them all within three months of the event.

If an employee experiences two reproductive losses in a year, they will be eligible for 20 days off.

9. New telecommuter class code

If you have staff who work remotely, you'll want to know that there is a new California workers' compensation class code.

After droves of employees starting working remotely after the COVID-19 pandemic began in 2020, the Workers' Compensation Insurance Rating Bureau created a new telecommuter class code (8871) and tethered its pure premium advisory rate to the 8810 clerical classification for easier administration.

Under Rating Bureau rules, code 8871 will receive its own rate which is 25% lower than the clerical rate. If you have remote workers, you'll want to ensure they are in the telecommuter class code to enjoy the lower premium.

10. New OSHA electronic filing requirement

A new rule by the Department of Labor requires firms with 100 or more employees in certain industries to electronically submit their OSHA Form 300 and 301 logs starting in 2024. These are in addition to submission of Form 300A-Summary of Work-Related Injuries and Illnesses.

The new rule applies to businesses in 104 high-hazard industries (you can find a full list here). The deadline for affected employers to file their forms electronically is March 2.

BIG CHANGE: *Firms in California will no longer be allowed to ask a job applicant about cannabis use.*

Human Resources

Age Discrimination Cases Up; Set Strong Policies

THE EQUAL Employment Opportunity Commission continues seeing a steady flow of complaints for one of the more common forms of workplace bias — age discrimination.

The number of court filings the EEOC made under the Age Discrimination in Employment Act (ADEA) in fiscal year 2023 was more than double that of fiscal year 2022. As the EEOC steps up its efforts under the Biden administration, it's crucial that employers have in place policies and employment standards to avoid any appearances of discrimination against workers based on age.

The ADEA prohibits harassment and discrimination on the basis of a worker's age for individuals over 40. This extends to any aspect of employment, including hiring, job assignments, promotions, training, benefits and more.

The law even applies to employers that use third party recruiters to screen job applicants, according to EEOC guidance.

RECENT CASES

- In March 2023, Fischer Connectors settled with the EEOC for $460,000 over accusations that the manufacturer fired a human resources director and replaced her with two younger workers after she had spoken up about company plans to replace other older workers.
- In September 2023, two former IBM human resources employees who were both over 60, sued IBM after they were terminated, alleging age discrimination.
- Wisconsin-based Exact Sciences agreed to pay $90,000 to settle a lawsuit alleging that it discriminated against a 49-year-old job applicant based on his age after it had turned him down for a medical sales rep position in favor of a 41-year-old.
- A 52-year-old woman sued a Palm Beach restaurant, alleging violations of the ADEA and the Florida Civil Rights Act of 1992. She claims that after working for 10 years as a seasonal server, she was terminated on the grounds that the restaurant was moving to year-round employment, yet continued to hire young seasonal workers.

What you can do

Age discrimination in the workplace doesn't just negatively affect employees. It also affects your company. Over the past 15 years, age discrimination cases have accounted for 20-25% of all EEOC cases — and such cases typically receive the highest payouts.

Ageism in the workplace is bad for business. Not only do you risk a large settlement, but you also miss out on a large talent pool of older workers in your hiring practices. You also miss out on the major contributions that older workers can make to your organization.

To prevent age discrimination at your firm:

- Train your managers and supervisors on age discrimination and that it won't be tolerated. Have in place consequences (and follow through on them) for managers that discriminate against an employee due to any protected status, including age.
- Consider taking out any sections of your application that disclose information about an applicant's age. Removing the date that an applicant graduated or completed their degree is helpful. This can allow hiring managers to focus on the skills and experience an applicant brings to the table rather than their age.
- If you have to go through a layoff, ensure you don't make any decisions based on age. You should focus only on two things during this process: making choices solely based on performance and the necessity of the position they hold. Even a seniority-based system is acceptable.

The takeaway and insurance

Often when the EEOC settles these cases, it will require the employer to sign a consent decree requiring them to implement age-discrimination training for hiring managers. You shouldn't wait for an order by the agency to do the same.

Finally: In the event you are sued for age discrimination, if you have in a place an employment practices liability policy, it may cover your legal costs and any potential settlements or verdicts.

Besides age discrimination, these policies will cover a host of other lawsuits by employees. ❖

Workers' Compensation

Rules on First Aid Claims Reporting

THE CALIFORNIA Workers' Compensation Uniform Statistical Reporting Plan requires that employers report small, medical-only first aid claims to their insurance carrier.

Many employers fail to report these claims as they consider them too small since the worker doesn't lose any time from work and they don't have to go to a doctor.

Under Rating Bureau rules, employers are required to report the cost of all claims for which any medical care is provided and medical costs are incurred — including those involving first aid treatment — even if the insurer did not make the payment.

The term "small medical only claim" is also used to refer to first aid claims.

For workers' comp purposes, that also means that the injured worker did not miss work because of the injury.

Besides these rules, there is a very good reason for reporting these claims because what starts as a first aid claim can develop into a larger claim over time.

At that point, if you never reported the claim in the first place, coverage issues may arise.

Additionally, any physician attending any injured employee must send copies of the Doctor's First Report of Occupational Injury or Illness to the workers' compensation insurance carrier or employer within five days of the initial examination. The insurer or employer must submit the physician's report with the Department of Industrial Relations (DIR) within five days of receipt.

Penalties for non-compliance

Any employer or physician who fails to comply with the submission of the Doctor's First Report for first aid claims may be assessed a civil penalty of not less than $50 nor more than $200 by the DIR if a pattern or practice of violations or a willful violation is found. ❖