

## Greetings!

As promised, we are following up to provide you with a more in depth analysis of some of the new employment laws that will go into effect January 1, 2012. Not only do we believe these laws are pertinent; they also attracted the most interest and concern from our clients. Below you will find more detail on the new laws and some practice considerations and suggestions. The laws discussed below are AB 469 (Wage Theft Prevention Act) and SB 299 (Pregnancy Disability Leave Health Care Coverage). Keep in mind, that if you have questions or concerns about how the laws may specifically affect your organization, Holden Law Group is here to support you.

## "Wage Theft Prevention Act of 2011"

### AB 469

Numerous Labor Code sections were amended with the passage of the Wage Theft Prevention Act. Most of the changes involved enhancing penalties for violations of existing wage payment rules and adding new criminal exposure for violations. The practical implication of these changes: make sure you are in compliance with the numerous and detailed rules that already exist in the Labor Code relating to the payment of wages and record keeping requirements.

Employers should be aware that the Wage Theft Prevention Act also saddles employers with a new requirement. Employers are now required to provide each employee with a written notice containing wage and employment information at the time of hire. Further, employers must provide a new written notice when the employee's wage or employment information changes. There are, of course, exceptions. This new requirement can be found in Labor Code section 2810.5.

To detail this new requirement, we have utilized the question and answer format, attempting to anticipate questions you may have yourself.

### *Question:*

Which employees are covered by this new requirement?

### *Answer:*

The notice must be given to non-exempt private sector employees.

The notice is not required for:

1. Public employees.
2. Exempt private sector employees.
3. Employees who are covered by a valid collective bargaining agreement that expressly provides for wages, hours of work, working conditions of the employee, proper premium wage rates for overtime and a regular hourly rate of pay that is not less than 30 percent more than the state minimum wage.

The fact that exempt employees need not be given the notice highlights the importance of properly classifying employees. If a non-exempt employee is improperly classified as exempt, not only will there be potential overtime liability; there will be violation of section 2810.5.

**Question:**

What information is required?

**Answer:**

The statute provides a detailed list:

1. Regular rate(s) of pay.
2. Overtime rate(s).
3. Whether payment is by the hour, shift, day, week, salary, piece, commission or otherwise.
4. Allowances, if any, that the employer claims as part of the minimum wage, including meal or lodging allowances.
5. The regular payday designated by the employer.
6. The employer's name, including any "doing business as" names the employer uses.
7. The physical address of the employer's main office or principal place of business and a mailing address, if different.
8. The employer's telephone number.
9. The name, address and telephone number of the employer's workers' compensation carrier.
10. Employers are also bound by the unusual catchall of "Any other information the Labor Commissioner deems material and necessary." Where and when employers would be notified of new requirements is not defined by statute and not known at this time.

**Question:**

What format must the employer use to provide this information?

**Answer:**

The information must be in writing. The law provides that the Labor Commissioner will prepare a template, not currently available. Employers should develop their own form meanwhile and can later compare it against the template. The statute does not specify whether an electronic communication or intranet posting will satisfy the "in writing" requirement. Presumably it will if it is in a format that can be saved and/or printed.

**Question:**

What language must be used in the notice?

**Answer:**

The written notice must be in the language the employer normally uses to communicate employment-related information to the employee.

**Question:**

When must the notice be provided?

**Answer:**

The statute reads, "At the time of hiring." Even though some or all of the required information may be contained in an offer of employment, it should also be provided on a single form with the new hire documents the employee completes the first day at work.

**Question:**

Is the employer obligated to update any of the information as it changes?

## Pregnancy Disability Leave & Health Care Coverage

### [SB 299](#)

This bill expanded California Government Code Section 12945 to ensure that women in California do not lose their employer-provided health insurance coverage while on Pregnancy Disability Leave ("PDL"). The newly amended law raises several practical implications for employers. Again, we have utilized the question and answer format.

#### *Question:*

Who does this new law apply to?

#### *Answer:*

This new law applies to any employer with five or more employees

#### *Question:*

What obligations do employers have to provide health care coverage to employees on PDL?

#### *Answer:*

Existing law already requires employers to allow a female employee to take a reasonable leave of absence for up to four months off for PDL. Keep in mind, this is time off if the employee is certified as "disabled" by her doctor. The new law also requires employers to pay for coverage under an existing group health plan for a female employee while on PDL.

#### *Question:*

If an employer does not have an existing group health plan, is the employer still obligated to provide health care coverage to those employees on PDL?

#### *Answer:*

The new law does not obligate an employer or employers to provide group health coverage for its employees. An employer is only obligated to provide group health coverage for those employees on PDL if the employees are currently enrolled in an existing group health plan maintained by the employer.

#### *Question:*

What can an employer do if an employee does not return to work after she has used her PDL?

#### *Answer:*

If an employee does not return to work after PDL the employer may recover the premium paid for health care coverage as long as the reason the employee does not return is not due to the employee taking leave under the California Family Rights Act or because of the continuance, recurrence, or onset of a health condition that is beyond the employee's control.

In light of these limitations, the employers may not be able to recover the costs. Setting up proper paper work and agreements with the employee at the outset of the leave will go a long way in enhancing the potential for recovery.

#### *Question:*

What determines if the reason an employee does not return to work from PDL is beyond the employee's control?

*Answer:*

The new law does not define what constitutes a health condition beyond the employee's control. Employers should, however, require the employee to provide medical certification of the medical condition that prohibits the employee from returning to work. Employers that intend to recover the premiums paid to employees who do not return from PDL should have a written policy describing the company's PDL policy and its intent to recover the premiums paid by the company for those employees who fail to return from leave. A signed agreement with the employee is even better.

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We realize that you are busy running your organization and time is of the essence. If you have questions or concerns about these laws and your organization's 2012 compliance concerning them, call us and we will be your resource and partner in navigating the changes.

Holden Law Group understands the responsibility required to stay compliant. We serve clients specialized expertise and a commitment to provide more than "best practices" advice. Keep your eye out for our next email with more in depth coverage of what's to come.

Sincerely,

Holden Law Group

