



December 2018

GET READY FOR THE NEW YEAR UPDATE

The following is a brief overview of some of the significant new legislation or other changes going into effect in California in 2019.

Sexual Harassment –

New California legislation will prohibit clauses in **settlement agreements** which prevent disclosure of factual information related to a sexual harassment claim. Any provision that waives the right to testify concerning alleged sexual harassment by the other party is also void and unenforceable.

Additional legislation will make it easier for sexual harassment claims to be made as a single incident of harassing conduct may be sufficient to bring a case, the standard for harassment may not vary based on the type of workplace, and harassment cases have been deemed rarely appropriate for disposition by summary judgment.

Employers with five (5) or more employees (or five or more contractors performing services) must provide at least two hours of **training** on sexual harassment to all supervisory employees and at least one hour of training to non-supervisory employees by January 1, 2020 and then every two years thereafter. New employees and new supervisors must receive the training within six (6) months of beginning employment or being placed in a supervisory position. Employees of a temporary services agency are to be trained by the agency. The Department of Fair Employment and Housing will be developing online training.

Recommendation: Employers may want to consider presenting the training at least twice a year to ensure that employees and/or supervisors receive the requisite training within the 6-month period. Employer's Legal Advisor will be offering these training sessions that meet the law's requirements. Contact us if you would like to schedule a training session for your employees and/or supervisors.

Wage and Hour Issues –

As of January 1, 2019, **agricultural employees** (of employers with 26 or more employees) must be paid overtime for more than 9 ½ hours worked in one day or more than 55 hours worked in one week.

California **minimum wage** increases to \$12 per hour (or \$11 per hour for employers with 25 or fewer employees) on January 1, 2019.

As a general rule, California law requires **payment for all hours worked**, and does not allow for “de minimus” off-the-clock work.

An employer cannot control an employee during **rest breaks** and cannot require the employee to remain on the premises.

Recommendation: Non-exempt employees must be paid for all hours worked and we have increasingly seen instances in which these employees are not paid for text messaging during off-hours or opening/closing the workplace. A review of timesheets and other payroll records can often reveal instances in which employees did not receive full pay. Additionally, many time records show that an employee may not have received a full meal period of at least 30 minutes. Contact us if you would like to have your payroll records audited to determine whether you are meeting all requirements.

Independent Contractor or Employee? – As previously noted, in *Dynamex Operations West, Inc. v. Superior Court* the California Supreme Court adopted the broad definition of “employee” found in the California Wage Orders. Additionally, and importantly, workers are presumed to be employees and the burden is on the hiring entity to prove that the individual is properly classified as an independent contractor.

FEHA Changes –

New Fair Employment and Housing Act (FEHA) regulations have expanded the definition of “national origin” to include physical, cultural or linguistic characteristics and various associations with individuals or organizations of a certain national origin group.

For more information or assistance in complying with these new requirements please contact Jeanne Flaherty or Bradley van Scoyk.