New Laws for July 1

Paid Family Leave Benefits

Under current law, employees may seek wage replacement benefits under the family temporary disability program (also referred to as paid family leave or PFL) for taking time off to care for certain seriously ill family members.

Effective July 1, SB 770 expands PFL benefits for employees to include benefits for time taken off to care for a seriously ill grandparent, grandchild, sibling or parent-in-law. PFL does not create the right to a leave of absence, but provides California workers with some financial compensation/wage replacement during a qualifying absence.

Because of SB 770, the Employment Development Department revised the Paid Family Leave pamphlet to add the new "family member" definitions. These pamphlets must be given to new hires and to employees who take a leave of absence for a covered reason. English or Spanish versions can be ordered from the CalChamber store.

Employee Handbook Creator subscribers: an updated PFL policy with the new family member definitions will be provided.

Background Checks

Effective July 1, AB 218 prohibits a state or local agency from asking an applicant to disclose information regarding a criminal conviction until after the agency determines the applicant meets minimum employment qualifications. There are specified exceptions, such as where a criminal history background check is otherwise required by law for the position.

At the local level, San Francisco's Fair Chance Ordinance limits the use of criminal history information by San Francisco employers. This ordinance becomes effective August 13, 2014. This ordinance also requires employers to post a new notice; the official notice will be available as a single poster translated into multiple languages on the CalChamber Store.

More information regarding the Fair Chance Ordinance will follow as the time approaches.

Workers' Compensation Predesignation of Physician

Workers' compensation regulations concerning predesignation of personal physicians also become effective July 1.

These regulations conform to workers' compensation reform legislation (SB 863), which was passed in 2012. Some provisions from SB 863 took effect January 1, 2013; but many of the law's provisions required administrative/regulatory action before implementation.

SB 863 made substantive changes with respect to the way that medical treatment is provided and paid for when an employee sustains a work related injury.

According to the Department of Industrial Relations, the final regulations change the criteria that an employee must meet to predesignate a personal physician or medical group for work-related injuries or illnesses to conform to SB 863.

For example, in the past, predesignation was permitted only if the employer provided regular health care insurance to its

employees. Labor Code Section 4600(d) was amended to allow the employee to predesignate as long as the employee has any health care coverage for nonoccupational injuries or illnesses in a plan, policy or fund (such as a spouse's policy), as described in Labor Code Section 4616.7. These regulations implement these provisions.

The regulations revised the forms used for predesignating a personal physician or a personal chiropractor. The updated forms will be available on HRCalifornia on July 1. A revised workers' compensation pamphlet (English or Spanish) is also available on the CalChamber store.

In addition, the regulations interpret and clarify what is meant by "chiropractic visits" under Labor Code Section 4604.5 and implements the limitation on the number of chiropractic visits an injured worker may have unless a specific exception applies. For injuries on or after January 1, 2004, a chiropractor may not be a primary treating physician after the employee has received 24 chiropractic visits, unless the employer has authorized additional visits in writing or a specific exception applies.

Work Sharing Plans

The California Employment Development Department (EDD) uses a special work sharing program to help companies avoid mass layoffs by sharing the available work among employees. AB 1392 changes the requirements for those work sharing plans that take effect on or after July 1, 2014.

The EDD's director must still approve plans. For more information about the work sharing program, visit EDD's work sharing webpage.

Best Practices

- Review your policies and practices to ensure compliance with legal updates.
- Make certain that you update your posters and pamphlets.

The Importance of Internal Complaint Procedures

A ruling from a recent California case reminds employers that it's important to have an effective internal complaint procedure in place. *Rosenfeld v. Abraham Joshua Heschel Day School, Inc.*, 2014 WL 2200910 (2014)

The law obligates employers to prevent harassment and discrimination in the workplace. A clear, well-communicated complaint process allows you to promptly respond to any concerns of inappropriate conduct, and potentially stop it before it progresses to unlawful conduct.

Moreover, your liability may be reduced if you have a good complaint process and the employee chooses to bypass it and go directly to court without providing you an opportunity to redress the situation and prevent further harm.

Employee Felt Forced Out Because of Age

Ruth Rosenfeld, a teacher, sued her employer for age discrimination; claiming that the school repeatedly reduced her teaching hours "in an effort to force her out of her position because of her age." Over a three-year school period, Rosenfeld's hours were reduced from 25 hours per week to 10 hours per week. Rosenfeld received some severance compensation with each reduction

in hours.

The school cited a decline in student enrollment as the reason for the reductions. After learning about the final reduction in hours, Rosenfeld sought legal counsel and quit before school started. However, more teaching hours became available before school started and would have been offered to Rosenfeld if she had not resigned.

The case went to trial, and Rosenfeld lost. On appeal, Rosenfeld argued that the court should not have allowed the jury to hear evidence relating to Rosenfeld's failure to use the school's internal complaint procedure before she sued.

But the appellate court held that the evidence of Rosenfeld's failure to use the school's internal process was properly admitted at trial and relevant to any damages.

A Good Complaint Process Can Limit Damages

Why was the evidence regarding Rosenfeld's failure to follow the internal process important to damages? Because shortly after Rosenfeld quit *without using the school's internal complaint process*, more teaching hours became available.

"Therefore, had Rosenfeld pursued the internal grievance procedure she would have taught the same number of hours during the 2007-2008 school year that she taught the year before," the court stated.

"Avoidable Consequences"

California law provides a defense called the "avoidable consequences doctrine." In brief, this defense means that a person who is injured is not entitled to recover damages that he/she could have easily avoided.

The *Rosenfeld* decision relied on the California Supreme Court's decision in *State Department of Health Services v. Superior Court*. In that case, the state Supreme Court ruled that the avoidable consequences doctrine also applies to sexual harassment cases brought under the state Fair Employment and Housing Act (FEHA).

The *Rosenfeld* court extended this holding to the age discrimination case before it, and found that it was proper to allow the school to point out that Rosenfeld could have avoided some of her damages if she had followed its complaint procedure.

An employer may try to reduce damages by showing:

- The employer took reasonable steps to prevent and correct workplace sexual harassment;
- The employee unreasonably failed to use the preventive and corrective measures that the employer provided; and
- Reasonable use of the employer's procedures would have prevented at least some of the harm that the employee suffered.

According to the state Supreme Court, "[t]his defense will allow the employer to escape liability for those damages, and only those damages, that the employee more likely than not could have prevented with reasonable effort and without undue risk, expense, or humiliation, by taking advantage of the employer's internal complaint procedures … ."

If a harassment lawsuit is filed under federal law, an employee's failure to follow an internal complaint procedure can result in a

complete bar to liability for harassment claims.

Multilingual Workforce

An employer with a multilingual workforce will need to take additional steps to clearly and effectively communicate anti-harassment and anti-discrimination policies to employees who speak languages other than English:

- Translate policies and communicate them in the language(s) spoken by your workforce.
- If possible, provide a complaint mechanism that identifies an official who speaks the language(s) of your workforce or explain that an interpreter will be provided, if necessary.

Tips for Instituting an Effective Complaint Process

Your company can benefit from including a description of your internal complaint process as part of the employment policies you distribute to employers. Some points to keep in mind:

- Clearly explain your complaint process to employees.
- Provide alternate avenues for raising complaints so that an employee can bypass his/her supervisor if, for example, the supervisor is the person engaging in the harassment, discrimination or other inappropriate conduct.
- Don’t focus on strict procedures, such as requiring a complaint to be in writing. The point is that you want to receive the complaint, regardless of how it’s made.
- State that there will be no retaliation for filing a harassment/discrimination claim or for providing information relating to a claim.
- Explain your process for promptly, thoroughly and objectively investigating all complaints of harassment/discrimination, and other prohibited conduct.
- Emphasize that you will take appropriate and immediate disciplinary action if warranted, up to and including termination.