Engage PEO Client Alert: California

Year-End Update on New Legislation

WHAT'S NEW: The California state legislature has enacted several new laws regulating employers and the workplace, most of which will become effective on **January 1, 2023**.

WHAT IT MEANS: The following are the most notable new employment laws:

PAY TRANSPARENCY IN JOB POSTINGS

Employers with 15 or more employees must post a pay scale in any job posting for a position that may be performed in California (including remote positions). "Pay scale" means the salary or hourly wage range that the employer reasonably expects to pay for the position. Employers who use a third party to manage job postings must provide the pay scale to the third party to be included in the job posting. Employers with less than 15 employees are still required to provide a pay scale to applicants upon reasonable request.

All employers must also provide a pay scale to current employees for the position(s) they hold upon request and maintain records of the job titles and wage rate histories for each employee for the duration of their employment plus three years after the end of the employment.

LEAVE FOR CARE OF "DESIGNATED PERSONS"

Employees may now take job-protected leave under the California Family Rights Act (CFRA) to care for a "designated person" with a serious medical condition. A "designated person" means an individual related by blood or whose association with the employee is equivalent to a family relationship.

In addition, the state's paid sick leave law, the Healthy Workplaces, Healthy Families Act has been expanded to permit employees to use paid sick leave for absences for otherwise qualified reasons related to the illness of a "designated person." For purposes of the state's paid sick leave law, "designated person" means any person identified by the employee.

With respect to CFRA and paid sick leave, employees may identify a "designated person" at the time of their requested leave and employees may be limited to one designated person per 12-month period.

MANDATORY BEREAVEMENT LEAVE

Employers with 5 or more employees will now be required to provide employees who have been employed for 30 days or more with up to 5 days of bereavement leave in the event of a death of a family member (spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent, grandchild). In the absence of a company policy, bereavement leave may be unpaid, but employees may elect to use accrued, and available paid sick leave, vacation, or another form of PTO during the absence.

The leave does not need to be taken consecutively but employers may require that it be completed within 3 months of the date of the family member's death, employers are permitted to request reasonable documentation to certify the need for leave.

EMPLOYEE PROTECTIONS FOR REPRODUCTIVE HEALTH DECISIONS

This law amends the Fair Employment and Housing Act by including "individual's reproductive health decision-making" --or a person's decision to use a particular drug, device, product, or medical service for reproductive health--as a new protected class and explicitly prohibiting discrimination on that basis. This law also prohibits employers from requiring an applicant or employee to disclose information about their reproductive health decision-making as a condition of employment or receiving employment benefits.

EXPANSION OF ANNUAL PAY DATA REPORTING REQUIREMENTS

Employers with 100 or more employees must submit an annual pay data report to the California Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH). Amendments to this law push the deadline to submit the report from March 31 to **the second Wednesday of May beginning in 2023, and on or before the second Wednesday of May each year thereafter**. Importantly, under the amendments, employers will no longer be allowed to submit an EEO-1 report in lieu of a pay data report.

Employers with 100 or more employees hired through labor contractors will now also be required to submit a separate pay data report to the CRD covering the employees hired through labor contractors in the prior calendar year.

Employers with multiple establishments must now submit a report covering each establishment separately, rather than submitting one consolidated report.

Importantly, in addition to the current requirement, the pay data reports must now include:

1. the number of employees by race, ethnicity, and sex in each of ten specified job categories
2. the number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the designated pay bands, and
3. **new requirement:** the median and mean hourly rate within each job category for each combination of race, ethnicity, and sex.

Engage PEO will provide covered clients with a preliminary report along with details on this reporting requirement in the coming months. For additional information, please refer to previous Client Alerts.

EMPLOYEE OFF-DUTY CANNABIS USE

Beginning **January 1, 2024**, employers may not take adverse action or otherwise discriminate against, including refusing to hire, an employee because of their personal use of cannabis away from the job during non-working hours. Employers also may not screen for or rely on a pre-employment drug test that shows the presence of inactive cannabis metabolites in an individual's hair or bodily fluids to revoke a conditional offer of employment. Instead, employers may rely on drug tests that measure current impairment and identify the presence of Tetrahydrocannabinol (THC) in an employee's bodily fluids when making employment decisions.

Employers may still maintain a drug- and alcohol-free workplace that prohibits employees from possessing, using, or being under the influence of cannabis on the job.

This new law does not apply to employees in the building and construction trades, nor to applicants or employees in positions that are subject to federal background check or testing laws.

SAN FRANCISCO PAID HEALTH EMERGENCY LEAVE

As of October 1, 2022, San Francisco employers must provide paid leave to employees for "public health emergencies" under a new Public Health Emergency Leave ("PHEL") Ordinance. Private employers with 100 or more employees anywhere in the world are now required to provide all employees performing work within the City and County of San Francisco with paid leave during a public health emergency if the employee is unable to work or telework due to any of the following:

- The recommendations or requirements of an individual or general federal, state, or local health order related to the public health emergency or the employee caring for a family member subject to such an order.
- The employee or a family member to whom they are caring has been advised by a healthcare provider to isolate or quarantine.
- The employee or a family member to whom they are caring is experiencing symptoms of and seeking a medical diagnosis or has received a positive medical diagnosis, for a possible infectious, contagious, or communicable disease associated with the public health emergency.
- The employee is caring for a family member and the school or place of care of the family member has been closed or is unavailable due to the public health emergency.
- There is an air quality emergency, and the employee is a member of a vulnerable population and primarily works outdoors.

Each year employees are entitled to up to 80 hours of paid time off for PHEL. Full-time employees or employees on a fixed schedule must receive an amount equal to the hours they regularly work in a two-week period. For employees with a variable schedule, the ordinance provides two methods of calculating the amount of leave.

Employees are eligible to use PHEL immediately upon hire. The PHEL must be provided in addition to any paid leave that the employer provides, such as paid sick leave, and may be used before exhausting other accrued paid leave, including vacation. PHEL does not need to be carried over from year to year. The amount of PHEL that is available to employees must be reflected on the employee's itemized wage statement or provided to the employee in a separate writing each pay day.

During 2022, employers can reduce or "offset" the amount of PHEL provided to employees with leave provided under the California COVID-19 supplemental paid sick leave (SPSL) law, which has recently been extended through December 31, 2022.

Similarly, during 2023 and subsequent years, employers are allowed to reduce the amount of PHEL provided to employees if federal, state, or San Francisco enacts a law that requires employers to provide paid leave or paid time off in response to a public health threat, entitling employees to use such leave for reasons covered under this ordinance.

NEXT STEPS FOR EMPLOYERS

In light of these legislative changes, **employers should review their policies and practices to ensure compliance**. If you have any questions, please contact your Engage HR Consultant or Account Manager.