Engage PEO Client Alert: California

Updates to California's Non-Compete Laws and Background Check Laws

UPDATE TO NON-COMPETE AGREEMENTS

WHAT'S NEW: Beginning **January 1, 2024,** employers in California will be prohibited from entering into non-compete agreements or attempting to enforce non-compete agreements regardless of where and when they were signed.

WHAT IT MEANS: Currently non-compete agreements are generally void (absent an exception). This law further expands the protection of employees. Any contract that includes non-compete provisions will be void, regardless of where and when it was signed, even if outside California, if the employee primarily resides and works in California.

Employers are also prohibited from entering into agreements with employees that include a void noncompete provision.

Lastly, the law specifically now allows for employees to seek injunctive relief, actual damages, and attorneys' fees and costs against companies for violating these non-compete laws.

WHAT EMPLOYERS SHOULD DO: Employers should review their agreements with California-based employees to ensure they do not include non-compete provisions. For agreements entered into prior to January 1, 2024, employers should refrain from attempting to enforce such clauses.

UPDATE TO BACKGROUND CHECKS

WHAT'S NEW: Beginning on **October 1, 2023**, employers in California will need to take additional steps before making decisions based on the results of a criminal background check.

WHAT IT MEANS:

Currently California's background check law (Fair Chance Act) prohibits employers from running background checks until after extending a conditional offer of employment. The law also requires employers to conduct an initial assessment if taking adverse action based on the results of an applicant's background check and provide a pre-adverse action letter with an opportunity to respond, before making any final decisions.

The new law now:

- Requires employers to consider additional factors when conducting the initial assessment, which include, but are not limited to, the specific personal conduct that resulted in the conviction, the degree/permanence (severity) of harm, whether the harm was to property or a person, the

applicant's age, whether there was a disability (including drugs or mental impairment), and whether trauma, domestic violence or other similar factors involved.

- Requires employers to allow an applicant with five business days after they have received a pre-adverse action letter to provide evidence of the applicant's rehabilitation and/or mitigating circumstances. Letters sent without a delivery receipt will be presumed to be received two days after email, five days after mailing within California, and ten days elsewhere in the U.S.
- Considers the applicant's provision of evidence for rehabilitation/mitigating circumstances to be both voluntary and optional. Additionally, the law prohibits employers from requiring the submission of additional evidence or specific document types. The update also expands the types of rehabilitation/mitigating circumstance evidence an applicant may offer and the employer must consider before making a final determination.
- Clarifies that current employees whose backgrounds are checked will also be covered by the law.
- Disallows employers from considering criminal offenses information, even if it is voluntarily provided by the applicant or employee, prior to extending a conditional offer.

WHAT EMPLOYERS SHOULD DO: California employers should review their policies and procedures about background checks to ensure compliance, and train appropriate members of management.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.