



CLIENT NEWS BRIEF

December 2011

Number 79

THREE NEW BILLS SUPPORT EMPLOYEE RIGHTS

This fall, Governor Brown signed three bills affecting employee rights. First, the Wage Theft Prevention Act of 2011, enacted by Assembly Bill (AB) 469, imposes new penalties on employers for failing to pay the minimum wage. Second, AB 592 makes it unlawful for an employer to refuse to grant an eligible employee's request for pregnancy or family leave. Third, Senate Bill (SB) 459 imposes civil penalties for the improper classification of an employee as an independent contractor.

Wage Theft Prevention Act of 2011 (AB 469). Existing California law provides for criminal and civil penalties for an employer's violation of minimum wage laws. AB 469 enacts the Wage Theft Prevention Act of 2011, which strengthens penalties against employers for failing to pay the minimum wage and imposes new recordkeeping requirements on employers. For example, AB 469 adds the potential penalty of restitution of wages to an employee who is paid less than minimum wage. The bill extends the time for the Division of Labor Standards Enforcement to bring an action for violation of minimum wage laws to three years from the date the penalty or fee became final. AB 469 also creates potential criminal liability by making it a misdemeanor for an employer that has violated the minimum wage law to willfully fail to pay a court judgment or Labor Commission final order for wages due.

No denial of an eligible employee's right to take pregnancy or family leave (AB 592). Under California law, certain employees are eligible to take up to 12 weeks of unpaid, benefit-protected leave from their employment to bond with a child or care for a family member with a serious health condition, or when the employee is suffering from a serious health condition which makes him or her unable to perform the functions of the job. A female employee disabled by pregnancy, childbirth, or related medical conditions may also be eligible for up to four months of unpaid leave or a reasonable accommodation.

AB 592 now makes it unlawful for an employer to interfere with or deny an employee's exercise of these rights. This means that an employer cannot refuse an eligible employee's request for family or pregnancy leave, nor can it refuse to provide reasonable accommodation for a female employee for a medical condition related to pregnancy or childbirth. As federal law already prohibits such interference, this change brings California's laws in line with federal standards for family and pregnancy leave.

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Civil penalties for an employer's willful misclassification of individuals as independent contractors (SB 459). SB 459 attempts to combat the problem of employers incorrectly classifying employees as independent contractors by prohibiting willful misclassifications. A willful misclassification occurs when an employer voluntarily and knowingly misclassifies an individual as an independent contractor for the purpose of avoiding "employee" status. An employer found by the Labor and Workforce Development Agency to have violated this rule may be subject to a civil penalty between \$5,000 and \$25,000, and may be ordered to display a notice on its website or place of business stating that the employer has violated the law by willfully misclassifying employees. SB 459 also prohibits an employer from charging an independent contractor a fee, or making any deductions from an independent contractor's compensation, when such fee or deduction would violate the law if the independent contractor had been properly classified as an employee.

If you have any questions about this legislation, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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