Get Ready For 2013 Employment Law Changes (Part 2)
PLUS: Commercial Co-Venture and Make Up Time Rules!

Employment Law Developments for 2013 (Part 2)

California employers, including nonprofit organizations, should begin compliance planning for about a dozen new employment laws that will go into effect January 1, 2013. We discussed two of these new laws in last month's newsletter. Below is an overview of five additional new laws. In light of these important legal changes, it is advisable to review and update your organization's employment policies and procedures. If your organization needs legal assistance with reviewing and updating its employment manual and policies, or other employment law issues, please visit our website or call 213-385-2977, x200.

No Fixed Salary Agreements Covering Overtime for Non-Exempt Employees

Many full-time, non-exempt employees are paid on a salary basis, meaning that their salaries are not defined by an hourly rate but instead by a yearly or monthly amount. When such employees work more than eight hours in one day or 40 hours in one week, they are entitled to overtime. Employers may no longer mutually agree with non-exempt employees to pay a fixed salary covering regular and overtime hours. The new law (AB 2103) amends California Labor Code Section 515 specifically to provide that such a fixed salary "shall be deemed to provide compensation only for the employee's regular, non-overtime hours, notwithstanding any private agreement to the contrary." It clarifies that salaried, nonexempt employees must be paid for each overtime hour at a rate equal to at least 1.5 times their weekly salary divided by 40, regardless of any agreement between the employer and the employee.

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Fundraising: Commercial Co-Ventures

Now more than ever, many charitable organizations need alternative ways to raise funds. A commercial co-venture (also referred to as "embedded giving" or "cause-related marketing") is a joint venture between a charity and a for-profit business offering financial benefits to both parties. Typically, the business announces to the general public that a portion of the purchase price of a product or service it sells will, during a stated period, be donated to the charity.

Though commercial co-venture programs provide charities with a relatively easy way to raise funds,
Employer Penalty for Failure to Provide Itemized Wage Statements

Section 226 of the California Labor Code specifies certain information that employers must record on an employee's wage statement. It also outlines the penalty - not to exceed $4,000 plus costs and attorneys fees - for "knowing and intentional" noncompliance in cases where an employee suffers an injury as a result of not receiving a proper wage statement. Before the new law, the term "injury" was not defined by statute. Under the new law (SB 1255), an employee is deemed to suffer an injury if an employer fails to provide a wage statement. An injury will also be deemed if the statement lacks accurate and complete information, and the employee cannot "promptly and easily determine" from the statement alone certain information including one or more of:

- the amount of gross and net wages paid during the pay period, all deductions, total hours worked, the dates of the period for which the employee is being compensated and hourly rates in effect,
- the deductions made from gross wages to determine the net wages during the pay period,
- the name and address of the employer,
- the name of the employee and only the last 4 digits of the employee's social security number or an employee identification number.

Thus, if an employee establishes a "knowing and intentional" violation of the wage statement requirements, the employee may now be presumptively entitled to collect the statutory penalties.

No Employment Discrimination Against Breastfeeding Mothers

The Fair Employment and Housing Act (FEHA) prohibits sex discrimination, which is defined presently to include gender, pregnancy, childbirth and medical conditions related to pregnancy or childbirth. FEHA has been amended (AB 2386) to provide that, for purposes of the Act, the term "sex" also includes breastfeeding or medical conditions related to breastfeeding. As a result, FEHA now expressly protects breastfeeding mothers from employment discrimination.

No Employment Discrimination Based on Religious Dress and Grooming Practices

FEHA was further amended (AB 1964) by the inclusion of "religious dress practice" and "religious grooming practice" to the religious beliefs or observances protected from religious discrimination. The amended Act requires "religious dress practice" to be broadly construed and "to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is...
part of the observance by an individual of his or her religious creed." "Religious grooming practice" is also to be broadly construed "to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed."

Employers are required to reasonably accommodate employees' religious dress and grooming practices unless the employer can show an "undue hardship." This standard requires an employer to demonstrate "significant difficulty or expense" when considered in light of several factors, including the nature and cost of the accommodation, the overall financial resources of the facility or covered entity involved, and the type of operations of the workforce. The amendment also specifically states that an "accommodation" of an individual's religious dress or grooming practice that would require that the person be segregated from the public or other employees is not a reasonable accommodation.

Wages Exempt from Garnishment Increased

This amendment (AB 1775) increased the amount of wages exempt from garnishment from the federal standard (the lesser of 25% of an individual's weekly disposable earnings or the amount by which the individual's disposable earnings for the week exceed 30 times the federal minimum hourly wage) to a new higher California standard (the lesser of 25% of an individual's weekly disposable earnings or the amount by which the individual's disposable earnings for the week exceed 40 times the California minimum hourly wage).

FAQ: Can We Allow Employees to Make Up Missed Work Time On A Different Day?

Our employees occasionally request time off work to tend to personal obligations -- taking care of a sick family member, attending a child's school event, etc. -- and want to make up the time on a different day. We want to be flexible with our employees and not require them to use vacation, sick leave or other paid time off, but we also want to avoid paying unnecessary overtime. Can we allow employees to make up time on other workdays while remaining in compliance with labor laws?

Yes. The basic rule is that an employer must pay overtime if an employee works more than 40 hours during a workweek or 8 hours during a single workday. However, California Labor Code section 513 provides a make up time exception to the law requiring overtime compensation for hours worked during a single workday. As long as certain conditions are met, an employer can allow an employee to take time off for a personal obligation and make up the

Seminar attendees will be eligible to participate in a FREE "Ask A Lawyer" Nonprofit Formation Clinic (date TBA at the seminar), where they will be able to meet one-on-one with an attorney to discuss specific questions relating to forming a nonprofit and obtaining tax exemption.

Advance registration is required. For more information and to register for the seminar, please visit our website.

Legal Services for Nonprofits

The Community Development Project builds strong foundations for healthy, vibrant and economically stable communities by providing comprehensive legal and capacity building services to organizations serving people with lower-incomes in the Los Angeles area. CDP provides assistance on a wide range of matters to community organizations, including:

Contract & Lease
Renegotiation

Does your nonprofit need to terminate or renegotiate contractual or lease obligations? Do you know whether your nonprofit is legally permitted to sublet unused space?

Modification & Reduction of Workforce

Is your nonprofit exploring...
missed time on a different workday, without resulting in overtime.

**Are there any restrictions on when the employee can make up the missed time?**

Yes. The make up time may be worked in advance of the missed time or after, but it must occur during the **same workweek** in which the time was missed. Furthermore, on the day the employee works the make up time, he or she may not work more than 11 hours in that one **workday** or more than 40 hours in that workweek without being entitled to overtime compensation. For example, if a full-time employee who works 8 hour days requests 4 hours off on Tuesday, the employee should not make up all 4 hours on Monday (or any single day) because this would result in a 12 hour workday, entitling the employee to overtime. However, the employee could make up 3 hours on Monday and 1 hour on Wednesday without being entitled to overtime.

**How should employees request make up time?**

Employees wishing to make up time off work must provide a **signed written request for each occurrence**. If an employee will be requesting time off that is to be made up at a fixed time over several weeks, he or she may request permission to make up such work time up to 4 weeks in advance. However, the make up time must be worked in the same week that the work time is actually lost.

**Are we required to approve requests for make up time? Alternatively, can we require make up time?**

No. Employers are not required to offer or approve requests for make up time. If make up time is offered, employers may not solicit, encourage or require the use of make up time.

**We want to offer the option of making up time off work. How should we implement this program?**

To help ensure that your organization complies with the make up time and overtime laws, it's a good idea to have a **written make up time policy** laying out the rules and limitations (e.g., not permitting employees to work more than 11 hours on make up days or 40 hours for the week without prior authorization), as well as a make up time request form for employees.

If your organization needs legal assistance with reviewing its make up time policy, updating its employment manual, or other employment law issues, please visit our [website](#) or call 213-385-2977, x200.
IRS Allows Deduction for Charitable Contributions to Disregarded Entities

The IRS recently issued Notice 2012-52, confirming that a charitable contribution to a domestic single-member limited liability company ("SMLLC") that is wholly owned and controlled by a single charitable organization and is classified as a disregarded entity for federal income tax purposes is deductible to the donor to the same extent as a contribution made directly to the parent charity. The parent charity remains responsible for meeting the substantiation and disclosure requirements applicable to the contribution and is encouraged to disclose that the SMLLC is wholly owned by the charity and is disregarded for federal tax purposes. For more information on substantiation and disclosure requirements, please see last month's newsletter.

For most federal tax purposes, an SMLLC is by default "disregarded" as an entity separate from its owner, unless it elects to be treated as a separate entity. This means that for most tax reporting purposes, the operations and finances of a disregarded SMLLC are treated as part of the parent charity and are reported on the parent's Form 990. Also, a disregarded SMLLC benefits from the parent's 501(c)(3) tax-exempt status without having to go through the tax-exemption application process itself.

Regardless of its treatment under federal tax law, an SMLLC is considered a separate legal entity for liability purposes. As such, charitable organizations generally use SMLLCs to maintain a consolidated federal tax reporting structure, while protecting assets and partitioning liability among distinct operations. For example, a charity can protect its assets from unknown liabilities associated with accepting a contribution of real property by creating an SMLLC solely for the purpose of receiving the contribution and owning the real property.