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Best in Law: Employers, Be Aware of Just-signed Laws

Bathrooms, Retirement Plans Among New Laws, Partner Brian Reider Writes in the *Press-Enterprise*



By D. Brian Reider

As we wind up this year and look back on the election, legislation passed in California and recent court decisions, there are multiple issues for employers to watch for in the next year, and beyond. Two recently

signed bills are worth note.

First, if a business establishment has “single user” restrooms available to the public, Assembly Bill 1732, recently signed into law by Gov. Jerry Brown, requires that, by March 1, the restroom be identified as “all gender” and be universally accessible. New signage must be installed to make it clear that the restroom is not intended solely for males or females. A “single user” restroom has no more than one water closet and one urinal and a locking mechanism controlled by the user.

Second, Brown signed Senate Bill 1234, which mandates that, eventually, all California businesses that employ at least five employees offer a retirement savings plan or make automatic payroll deposits into a state-sponsored program for the benefit of those employees.

The California Secure Choice Retirement Program will require that, at some point, (probably not until 2018), workers whose companies do not offer a retirement plan will have 3 percent of their wages deducted. The wages will be deposited into an account overseen by a soon-to-be-created state board. Workers can opt out of the deduction.

Another topic of concern for employers coming out of the election is the passage of Proposition 64, known as the Control, Regulate and Tax Adult Use of Marijuana Act. Effective immediately, adults 21 and over may legally use and grow marijuana for personal use, and, beginning in January 2018, it will be legal to sell the drug.

People



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The Act contained a number of protections for employers, who will be allowed to develop or maintain drug-free workplace policies, regardless of whether the marijuana use is medicinal or recreational. Employers are also allowed to continue pre-employment screening and limited testing of current employees for marijuana. The policies a company will need to protect itself are complex, and a knowledgeable attorney should be consulted to ensure compliance with both California and federal laws.

Finally, one recent California court decision is worth mentioning. It relates to what must appear on an employee's wage statement – a mundane sounding issue that can have serious implications if an employer is sued for failure to comply with state law.

In *Soto v. Motel 6, Operating L.P.*, an employee class action claim was filed in which it was alleged that the employer failed to include the monetary amount of accrued vacation pay in the employees' wage statements. This was claimed to be a violation of California Labor Code section 226, which has detailed requirements for what must be on a wage statement.

The Court of Appeal upheld a trial court decision that dismissed the lawsuit, holding that, under section 226, accrued vacation was not required to be listed on the paystub. The reason, fundamentally, was that the purpose of the wage statement is to tell the employee what they are actually being paid at that time so they can object to any omissions or inconsistencies. The case serves as a good reminder that every employer should have an expert review employee paystubs to ensure that all required information is included.

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