

EMPLOYER UPDATE

Anti-Discrimination, Anti-Harassment and Pregnancy Disability Leave



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**New policy, notice, record-keeping and
investigation requirements
effective April 1, 2016...**

Pregnancy Disability Leave Regulations

The essential rights of a California employee to Pregnancy Disability Leave (“PDL”) have not changed, however, effective April 1, 2016, employers must comply with new related policy and notice requirements. An employee is entitled to PDL if the employee works for an employer who regularly employs five or more individuals.

The California Department of Fair Employment and Housing (“DFEH”) has created a new poster, entitled “Your Rights and Obligations as a Pregnant Employee,” which employers are now required to post or provide to employees. Employers can meet the new regulation’s posting requirements by posting this notice in a conspicuous place on its premises. We recommend that employers post this notice as soon as possible, even though the DFEH’s website states that employers will not be penalized if they do not post the new notice by April 1.

In addition, when an employee provides an employer with notice of pregnancy or the need for leave or reasonable accommodation related to pregnancy, employers should provide the employee with a copy of the new “Your Rights and Obligations as a Pregnant Employee” notice.

Finally, employers are required to either (1) provide employees with notice of their PDL rights in the next version of their

Our Legal Services

Avoiding costly employment litigation begins with the establishment of effective employee policies and procedures. Our attorneys work with our employer clients to develop and update employment policies and practices focused on each business’ particular needs. We draft employee handbooks and keep up to date on evolving State and Federal laws so that we can advise our clients to ensure compliance with workplace matters. In addition, we advise our business clients on handling “problem” employees, internal grievances, leaves of absence, independent contractor/employee distinction issues, disability accommodation, wage and hour matters, and employee severance agreements.

Our attorneys also present seminars on a variety of employment topics, such as Prevention of Sexual Harassment, California’s Sick Leave Law, and Family and Pregnancy Leave Laws.

Our employer clients can easily update their employment practices with our Smart Employer Package: One hour initial meeting, preparation of an employee handbook tailored to your business, guidance on how to comply with California’s mandatory sick leave law and required employment notices, and a follow-up meeting to answer any questions you may have.

This newsletter has been prepared by Corey, Luzaich, de Ghetaldi, Nastari & Riddle LLP as an advertisement. The material is for informational purposes only and does not constitute legal advice or create an attorney-client relationship. The material is not guaranteed to be correct, complete, or up to date.

employee handbook or (2) send employees a notice of such rights on an annual basis.

The notice also discusses potential employee rights under the California Family Rights Act (“CFRA.”) This law applies to employers who employ 50 or more employees within 75 miles of the worksite where the employee at issue is employed. To be eligible for leave or other rights under CFRA, the employee must have more than 12 months of service with the employer, and at least 1,250 hours of service with the employer during the previous 12-month period.

Anti-Discrimination and Anti-Harassment Regulations

Heightened Employer Notice Requirements

The updated Fair Employment and Housing (“FEHA”) regulations place additional burdens on employers to develop and distribute harassment, discrimination and retaliation prevention policies. Specifically, employers must have a policy that:

- is in writing;
- lists all current protected categories covered under FEHA. It is no longer permissible to list only some protected categories and additionally state “or any other characteristic protected by law”;
- indicates that the law prohibits coworkers, third parties, as well as supervisors and managers from engaging in conduct prohibited by FEHA;
- creates a complaint process that ensures: confidentiality to the extent possible under the circumstances; a timely response; an impartial, fair, thorough, and timely investigation by qualified personnel; appropriate due process, documentation and tracking; that appropriate conclusions will be made and remedial actions will be taken, and timely closure;
- provides a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor, including an alternate reporting option;
- instructs supervisors to report any complaints to a designated company representative;
- makes clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in a workplace investigation.

Employers must obtain written acknowledgement and receipt of such policies from employees. Such policies must be translated into all languages that are spoken by 10% or more of the employer’s workforce.

Stricter Record-Keeping Requirements for Sexual Harassment Training Seminars

Employers who are mandated to provide sexual harassment prevention training to supervising employees are also faced with new record-keeping responsibilities. To track compliance, an employer shall keep documentation of the training it has provided its employees for a minimum of two years, including but not limited to the names of the supervisory employees trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written

or recorded materials that comprise the training, and the name of the training provider.

What is FEHA?

FEHA is the primary law that provides workers, including employees, unpaid interns and volunteers, with protection from discrimination, retaliation and harassment in employment. FEHA’s anti-discrimination provisions apply to all employers regularly employing five or more individuals. FEHA’s anti-harassment provisions apply to all employers with only one or more employees.

FEHA provides protection from discrimination, retaliation and harassment in all terms and conditions of employment based on all of the following protected categories:

- Age (40 and over).
- Ancestry.
- Color.
- Religious creed.
- Denial of family and medical care leave.
- Disability (mental and physical), including HIV and AIDS.
- Marital status.
- Medical condition (cancer and genetic characteristics).
- Military and Veteran Status
- Genetic information.
- National origin.
- Race.
- Religion.
- Sex, including gender, pregnancy, childbirth, and medical conditions related to pregnancy or childbirth, breastfeeding or medical conditions related to breastfeeding.
- Gender, gender identity and gender expression.
- Sexual orientation.

FEHA also prohibits retaliation against any person for making a complaint under FEHA, for assisting another in making such a complaint or for opposing any action in the workplace that would constitute a violation of FEHA.

If you have questions about this information or any other employment law inquiries, please contact us.

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