Severson & Werson
A Professional Corporation

FINANCIAL SERVICES
INSURANCE
CONSTRUCTION
COMPLEX LITIGATION

Labor & Employment

EFFECTIVE JULY 1, 2015

All California Employers Must Offer Paid Sick Leave!!

As we previously advised, effective July 1, 2015, under California's Healthy Workplaces Healthy Families Act ("Act"), Employers must provide non-exempt and exempt employees one hour of paid sick leave ("PSL") for every 30 hours worked. This includes full-time, part-time, temporary and per diem employees.

Employers must have their PSL policy in place on or before July 1, 2015. The policy must be fully compliant with all of the Act's nuances and details including its requirements for: (1) notice to new hires; (2) notice to current employees; (3) posting; and (4) record keeping. The Act's posting requirements, should have been met already. As of January 1, 2015, all employers were required to have placed, in a conspicuous location, the requisite postings advising employees of their rights to PSL under the Act.

California Family Rights Act's New Regulations

Effective July 1, 2015 are new regulations under the California Family Rights Act ("CFRA"). These new regulations harmonize with some, but not all of the 2008 Family Medical Leave Act ("FMLA") requirements. Below are examples of the significant changes to the regulations.

- *Spouse.* The term "spouse" under CFRA regulations now includes registered domestic partners and same-sex partners in marriage, they are covered under CFRA, just like spouses are covered under the FMLA. Employers should take note, however, domestic partners are not included in the FMLA. Thus, this change in CFRA regulations may give a domestic partner more family leave, as a domestic partner will not have exhausted his/her FMLA leave while taking CFRA leave to care for a domestic partner.

- *Serious Health Condition*. Under CFRA, an illness, injury, impairment or physical or mental condition, which involves "inpatient care" qualifies as a serious health condition." CFRA's definition of "inpatient care" has been revised. Previously, CFRA and FMLA were consistent, inpatient care meant an overnight stay in a hospital, hospice or residential care facility. The new CFRA regulations, however, only require that an individual have an "expectation" they will remain overnight. In other words, under CFRA an individual who is admitted to the hospital with the expectation that he or she will remain overnight but is later discharged (or transferred to another facility) will still qualify as a person with a "serious health condition."

- *Notice Requirements.* The new CFRA regulations notice requirements conform with FMLA, which requires an employer to respond *within five business days* to an employee's request for CFRA leave. Previously, the employer could take up to 10 calendar days to respond.

- *Medical Certification.* The new CFRA regulations, which are consistent with the FMLA, allow employers to require employees to provide medical certification within 15 calendar days, unless not practicable. If an employee fails to timely return the certification, the regulations provide that an employer may deny CFRA protections for leave. However, employers are strongly encouraged to consult with counsel prior to denying CFRA protections.

Under the new regulations an employer may *not* contact a health care provider for any reason other than to authenticate a medical certification.

- *Key Employee.* The CFRA regulations adopt the FMLA's definition of "key employee," which is "an employee who is paid on a salary basis and is amongst the highest paid 10 percent of the employer's employees who are employed within 75 miles of an employee's worksite at the time of the leave request."

- *Health Benefits.* The CFRA regulations make it clear, an employer must maintain an employee's benefits for both Pregnancy Disability Leave (PDL), up to four months, and "baby bonding" under CFRA - 12 weeks. Under the FMLA, only 12 weeks of benefits need be paid for either PDL or baby bonding.

- *Reasonable Accommodations and the Interactive Process.* Employers should not automatically terminate employees upon the exhaustion of FMLA and/or CFRA leaves of absence for an employee's own injury or illness. While not part of CFRA, the new regulations provide that an employee may be entitled to additional leave as a reasonable accommodation for disability after the employee exhausts available FMLA/CFRA leave. The regulations state that, if an employee has a "serious health condition" qualifying for CFRA leave that also is a "disability," but the employee cannot return at the conclusion of CFRA leave, the employer has an obligation to engage in an interactive process to explore whether a leave extension would be a reasonable accommodation.

- *Handbooks Must Contain CFRA Information!!!* Employers that publish employee handbooks, which describe other kinds of personal or disability leaves available to its employees, must include a description of CFRA leave in the next edition of their handbook.

- *Posting Requirements.* Employers are required to post CFRA notices "where it can be readily seen by employees and *applicants* for employment." The requisite postings must be up no later than July 1, 2015.

The new regulations also address other issues such as calculating leave entitlement, accrual of paid leave, obtaining second opinions and guidance on joint employer compliance.

Compliance is Important!!

Employers must ensure their policies and practices are compliant with FMLA and CFRA leave laws. Failure to do so may subject an employer to a civil lawsuit or administrative proceedings. Supervisors may also be personally liable for violating these laws.

If an employer unlawfully interferes with an employee's exercise of FMLA/CFRA rights, the employer may be subject to financial awards of lost wages and benefits, punitive damages, reinstatement, promotion and back pay, attorneys' fees and costs.

REMINDER: CHANGES AS OF JANUARY 1, 2015

Employers should take this opportunity to ensure their policies and practices are compliant with the laws below, which went into effect on January 1 of this year.

The Fair Employment and Housing Act Expanded Protections
The Fair Employment and Housing Act ("FEHA") has expanded its anti-discrimination and anti-harassment prohibitions to include paid and unpaid interns, those in training programs and volunteers.

Also, employers cannot refuse to select a person for a training program, or discharge a person from a training program because of a conflict between the individual's religious belief and any employment requirement, unless an accommodation of the religious belief would create an undue hardship on an employer.

Employers should check their policies and handbooks to ensure they include these expanded protections.

Sexual Harassment Training and Abusive Conduct
California employers, subject to the mandatory sexual harassment prevention training requirement for supervisors, must include a component on the prevention of "abusive conduct."

PSL Posting
As discussed above, as of January 1, 2015 the Healthy Workplaces Healthy Families Act required employers to have the requisite postings in place.

CHANGE AS OF MARCH 2015

NLRB Issue Handbook Guidelines To Non-Union and Union Employers
On March 18, 2015, the National Labor Relations Board ("NLRB") issued a 30 page memorandum advising what common handbook policies have been found to violate of Section 7 of the National Labor Relations Act ("NLRA").

Section 7 of the NLRA protects activity by an employee or group of employees which seek to improve or discuss their pay and working conditions.

The most challenging task for employers is, when drafting employee policies, to ensure the policies cannot be reasonably construed to restrict Section 7's concerted protected activity. It is not enough that the policies on their face do not violate the NLRA. The NLRB has made it clear, an employer's lawful intention behind the policy will not shield the employer from liability, "the law does not allow even well intentioned-rules that would inhibit employees from engaging in activity protected by the Act." For example, an employer's blanket policy that provides "insubordination is prohibited" violates the NLRA. The NLRB concluded that this policy is overbroad and, thus, can reasonably be inferred to prohibit concerted, protected activity such as discussing wages, hours and working conditions.

Employers must carefully review their handbooks to ensure their rules and policies are compliant with the NLRA.

Stay Tuned…
Severson's Consumer Financial Newsletter is on its way. Inside you will find a more detailed analysis of the NLRB's March 17, 2015 memorandum.

Questions? Clarifications?

These new laws can cause quite a bit of confusion, especially PSL requirements and compliance with the NLRB handbook guidelines. Employers must ensure all policies and practices are amended to include the new laws as soon as possible.

Employers should also take the opportunity to ensure their entire employee handbook and postings are completely up-to-date.

For more information on any of these new laws, handbook compliance, or any employment compliance issues, contact Rhonda L. Nelson at 415-677-5502, rln@severson.com; or Danielle M. Ellis-Andrews at 415-677-5504, dme@severson.com.

www.severson.com

SAN FRANCISCO
One Embarcadero Center
Suite 2600
San Francisco, CA 94111
415.398.3344 Phone
415.956.0439 Fax

ORANGE COUNTY
19100 Von Karman Avenue
Suite 700
Irvine, CA 92612
949.442.7110 Phone
949.442.7118 Fax