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IMPORTANT NEW LABOR & EMPLOYMENT UPDATES

Your Handbook Is Due for a Check-Up

The new Los Angeles paid sick leave ordinance, amendments to the California Fair Employment and Housing Act (“FEHA”) regulations, and continued developing guidance from the National Labor Relations Board on employee handbook provisions mean that your Company’s handbook is due for a check-up. These developments mandate review of and/or changes to your Company’s sick leave policy (for Los Angeles employers), anti-harassment, anti-discrimination, and anti-retaliation policies, and any confidentiality policy, code of conduct, work conduct rules, personal electronic device policy, or conflict of interest policy.

Los Angeles Paid Sick Leave Ordinance

On April 19, 2016, the Los Angeles City Council voted in favor of **48 hours** of annual paid sick leave for Los Angeles employees as an amendment to the L.A. City minimum wage ordinance. This amount of paid sick leave is double the amount required by California state paid sick leave law. The coverage of the ordinance is broader than the state paid sick leave law- no categories or groups of employees are excepted.

Sick leave under the ordinance can be used on the employee’s written or verbal request for the same reasons specified in the California paid sick leave law. An employee may use the time for him or herself, or a covered family member, like the state law. However, the definition of family member under the L.A. ordinance is broader than the state paid sick leave law definition and includes “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

On July 1, 2016, current Los Angeles employees must have begun to accrue or received a grant of sick leave that can be used beginning on the 90th day of employment or July 1, 2016, whichever is later. Employees accrue at the rate of one hour for every 30 hours worked, similar to the state paid sick leave law, or can receive a lump sum grant. Regardless of which method is used, up to 72 hours of unused sick leave must carry over from year to year, double the carry over required by the state paid sick leave law. Payout of unused sick leave is not required upon termination.

This Los Angeles ordinance requires that Los Angeles employers review and update their sick leave policies as needed.

Amended FEHA Regulations

On April 1, 2016, amended FEHA regulations took effect. These amendments require that employers update and redistribute their anti-harassment and anti-discrimination policies. As a preliminary matter, the reach of the FEHA regulations was extended to employers with a *total* of five employees, even if they have less than five employees in the state of California. The previous requirement was five or more employees within the state of California. Thus, all California employers should check to see if they are covered by the FEHA.

Prior to the amendments, only sexual harassment policies were required to be in writing. Now, all anti-discrimination and anti-harassment policies must be in writing. These policies must include the following:

- Categories of individuals protected by the FEHA;
- A statement that all employees and third parties are prohibited from engaging in discrimination, harassment, or retaliation;
- A confidential, internal complaint procedure that includes specific remedial measures and provides an alternative method to file a complaint other than contacting a direct supervisor;
- Instructions to supervisors on how to report complaints of misconduct;
- Assurances that allegations of misconduct will be addressed through a fair, timely, and thorough investigation; and
- Guarantees that the company will not retaliate against employees for lodging a complaint or participating in an investigation.

The amendments also require that employers review their anti-discrimination and anti-harassment policies to ensure they are consistent with the following changes:

- FEHA discrimination and harassment protections apply to unpaid interns and volunteers.
- Gender discrimination includes discrimination based upon sex stereotyping, an individual's gender expression or gender identity, or whether an individual is transgender.

The anti-harassment and anti-discrimination policies must be distributed to all employees, as well as unpaid interns and volunteers. A signature page or acknowledgment of receipt must also be provided with these policies, and must be signed separately from any employee handbook acknowledgment of receipt.

National Labor Relations Board (“NLRB”) Guidance on Employee Handbooks

The NLRB has continued its reach into non-unionized workplaces with extensive guidance regarding employee handbook policies issued in the spring of 2015. According to the NLRB, its interest is ensuring that handbook policies cannot reasonably be construed by employees as restricting Section 7 activity, even if the policies are not designed or intended to have that effect. Employees have a Section 7 right to discuss wages, hours, and other terms and conditions of employment with fellow employees, as

well as with nonemployees, such as union representatives. This activity is protected under the National Labor Relations Act (“NLRA”).

Policies found to contain language that violates Section 7 included:

- Confidentiality Policies that broadly restrict an employee’s right to publish or disclose the Company’s or another’s confidential or proprietary information;
- Work Conduct Rules that require employees to be respectful of others and the Company;
- Work Conduct Rules that restrict employees from making statements or taking action that would cause damage to the Company’s business or reputation;
- Work Conduct Rules that restrict employees from picking fights online;
- Work Conduct Rules that prohibit walking off the job;
- Company logo, copyright, or trademark policies that broadly prohibit an employee’s use of a Company logo, copyright, or trademark;
- Personal electronic device policies that broadly prohibit the taking of photographs or video on Company property or restrict employees from wearing cell phones, making personal calls or viewing or sending texts while on duty;
- Conflict of Interest Policies that prohibit employees from engaging in any action that is not in the best interest of the employer.

This guidance affects many employer handbook policies, and thus they should be reviewed to ensure consistency with the NLRB’s position.