

**While Away on Summer Vacation –
Three New Developments in Employment Law**

Summarized below are three powerful developments that will impact most, if not all, businesses in California. The first section describes a coming expansion of employee family leave rights. Sections two and three describe new laws to combat “identity theft” and which add to the ever-growing body of employee privacy rights.

1. California is Very Close to Mandating Paid Family Leave.

California moved closer to becoming the only state to require that paid family leave be offered by all employers. The California Assembly has approved a modified version of the Paid Family Leave Bill introduced by the California Senate (Kuehl; D-Santa Monica). The Bill now returns to the California Senate for a vote on the modified version.

The Bill covers all employers, no matter how small, and expands the circumstances under which employees can take family leave. Currently, the California and federal family leave laws apply only to employers having at least 50 workers, and provide twelve weeks of unpaid family leave. As it stands now, the Assembly-approved Bill has a six-week component of paid leave. Further, unlike the current laws on family leave, the new Bill does not require that an employee work for the company for a minimum time before qualifying for leave. Thus, a worker could be on the job for one day and apply for leave. (Currently an employee must be on the job for at least one year before qualifying for leave.) The Bill removes other current employer protections, such as having no restrictions on the number of workers who can take leave at one time.

In summary, if this Bill becomes law, it will impact all companies having fewer than 50 employees, which are not currently subject to the California Family Rights Act

or the federal Family and Medical Leave Act. It will impact all companies that currently have no obligation to offer paid family leave. Interesting fact: of the 130 countries that have some type of government-mandated family leave program, only Ethiopia, Australia and the U.S. do not offer any component of paid leave.

2. To Protect Against “Identity Theft,” Employers Have New Duties Regarding Employee and Applicant Background Checks.

Legislation passed recently adds to the steps that employers must take when conducting background checks on employees and applicants. This law applies to all “investigative” checking, which may also include the more common reference checks. The law applies to current employees and new hires.

Specifically, employers conducting or requesting a background check must:

- ? Notify the applicant or employee in writing within three days of requesting the background check that an “investigative consumer report” about the person’s character, general reputation, personal characteristics and mode of living will be made;
- ? Include in the notice the name and address of any agency conducting the investigation and the nature, scope and purpose of the investigation requested. The notice also must include information about how the applicant or employee can obtain a copy of the report from the agency;
- ? Give the applicant or employee a copy of the report and identify the agency that issued the report, plus information about how to contact the agency. The employer must give this information either at the time of the meeting or interview with the applicant or employee or within seven days of the date the employer receives the report, whichever is earlier; and
- ? Certify to the agency that the employer has made the required disclosures to the applicant or employee, and that the employer will comply with the requirement to give the person a copy of the report.

An important exception to the notification requirement applies when an employer suspects wrongdoing by the subject of the investigation, or the employer believes in

good faith that the employee is engaged in criminal conduct that could result in a loss to the employer.

Employers should, therefore, immediately review all reference and background checking policies, and comply with all notice requirements. This law also provides ways for the subject to dispute the accuracy of the report, plus rules about retaining records, with penalties for violations. As mentioned above, it is unclear whether the law will be held to apply to ordinary reference checking, so it is best to be conservative.

3. Employers Face New Restrictions on the Use of Employees' Social Security Numbers.

Another new "privacy" law took effect July 1, 2002, which bars any person or entity, other than a government agency, from using an individual's Social Security Number in certain ways. The following conduct is specifically prohibited:

- a. Public posting or displaying of an individual's Social Security Number.
- b. Printing an individual's Social Security Number on any card required for the individual to access products or services provided by the person or entity.
- c. Requiring an individual to transmit his or her Social Security Number on the Internet unless the connection is secure, or the Social Security Number is encrypted.
- d. Requiring an individual to use his/her Social Security Number to access a website, unless a password, unique identification device, or unique personal identification number is also required to access the site. This may require a change in systems used to access or transmit personal, business, human resources or payroll information on the Internet.
- e. Printing an individual's Social Security Number on any materials that are mailed to the individual, unless State or Federal Law requires the Social Security Number to be on the document mailed. Note that "applications and forms" sent by mail may include Social Security Numbers.

If an individual's Social Security Number has been used in any of these ways before July 1, 2002, it may continue to be used in that manner after July 1, but only if all the following conditions are met:

- x. The use of the Social Security Number is continuous. If the use is stopped for any reason, the new requirements apply.
- y. The individual is given an annual disclosure informing the individual that he or she has the right to stop the use of his or her Social Security Number in a manner prohibited by the new requirements.
- z. A written request by the individual to stop the use of his or her Social Security Number prohibited by the Law shall be implemented within thirty days of receipt of the request. A person cannot be charged a fee or denied services for making this request.

This Law does not prevent the collection, use or release of a Social Security Number as required by State or Federal Law, or the use of a Social Security Number for internal verification or administrative purposes.

In conclusion, who said "good things happen in threes?" The Paid Family Leave Bill is expected to pass the Senate but could be vetoed. I suspect the "background checking" and "privacy" laws will get more attention given the growth in lawsuits over invasion of privacy rights and identity theft.

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