

Law Report

LEGAL NEWSLETTER

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CALIFORNIA'S NEW EMPLOYMENT LAWS FOR 2009

All California Employers Must Comply with New Laws Taking Effect in 2009

California employers need to know several key new laws affecting their businesses. California continues to be one of the leading workplace regulators. This article summarizes several principal new employment laws effective on or before January 1, 2009. If your company is located outside California, please note these new state laws as possible models for future regulation in your home states.

Starting January 1, 2009, California Vehicle Code prohibits drivers from engaging in text-based messages while driving.

Cellular Phone Use. Since July 1, 2008, California has prohibited drivers from using a hand-held cell phone. Starting January 1, 2009, Vehicle Code section 23123.5 prohibits drivers from engaging in text-based messages while driving. Penalties for violating this section are identical to the cell phone regulations. Specifically, the law prohibits writing, sending or reading text-based communication, such as text messages, instant messages and emails on a wireless device or cell phone while driving. Senate Bill 28. Employers should update their employee handbooks to reflect this new law.

New Exempt Computer Professionals' Minimum Pay. Effective January 1, 2009, California amended Labor Code section 515.5 to allow payment to exempt-from-overtime computer professionals as a monthly or annual salary. Prior to this amendment, computer professionals had to earn a minimum hourly rate of \$36 to qualify for this exemption. The hourly rate for 2009 is increased to \$37.94. For 2009, computer professionals who meet the other exempt requirements may be paid an annual salary of not less than \$79,050 (paid once a month in an amount at least \$6,587.50) rather than hourly. The minimum compensation requirements will continue to be adjusted annually based on the Consumer Price Index. Assembly Bill 10. Employers should carefully review Labor Code section 515.5 in detail to determine if their employees qualify for this exemption. As with all other overtime exemptions, misclassification liability is potentially substantial and may include various penalties, interest and attorneys' fees.

Pay for Temporary Service Employees. This new 2009 California law governing pay for temporary employees, which modifies Labor Code section 201.3, requires temporary service employers to pay such workers on a weekly basis (or daily if an employee is assigned to a client on a day-to-day

basis). Thus, as of January 1, 2009, the temp agency must pay wages for the current week on the regular payday in the following calendar week. The new rules do not apply to employees who are assigned to a client for more than 90 days, unless the temp agency pays such employees on a weekly basis. Employers using temporary agencies should ensure their vendors comply with these sections, as employees could assert "joint employer" liability wage claims against both the temporary agency and the employer. Failure to comply with this law can result in civil and criminal penalties. Senate Bill 940.

California now allows monthly or annual salary to exempt-from-overtime computer professionals.

San Francisco Commuter Benefits Ordinance. Beginning January 19, 2009, San Francisco employers with 20 or more employees must offer commuter benefits to employees who work at least ten hours per workweek within the San Francisco area. This includes offering employees at least one of the following transportation benefits: (1) a pre-tax election up to the present cost of \$115 per month to purchase transit passes or van-pool rides; (2) an employer-pro-

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EXPANDED FORMS AND HANDBOOK UPDATED FOR 2009

We are pleased to announce that we will be offering revised and expanded hire-to-fire employment forms and our "soup-to-nuts" employee handbook. These new editions will enable you to remain in compliance with new laws, including new arbitration provisions and leave of absence requirements.

Our updated forms and handbook will reduce your legal liability while providing necessary and useful information to your employees about what's expected in your place of employment. We encourage all employers to have current policies and supporting employment forms in use.

Call today and place your orders. Currently, our costs remain the same as they've been for several years: \$150 for the forms package and \$300 for the handbook. Prices will be going up in the near future.

Have our forms and manual already? Call for special pricing for upgrade customers. Please visit our website at www.tbowleslaw.com for more details.

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"NEW LAWS"

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vided monthly transportation pass worth at least \$45; or (3) employer-provided transportation at no cost to employees. Failure to comply with this program will result in monetary fines. San Francisco employers should consult with legal counsel to prepare to comply with these new regulations.

I-9 Passport Cards

Identification. The Departments of State and Homeland Security have begun issuing "passport cards" which may be used as I-9 form "List A" documents to verify employment. The List A passport card may be presented by newly hired employees during the employment eligibility verification process to show work-authorized status. I-9 form List A documents can prove both identity and work authorization.

2009 Family and Medical Leave Act. The U.S. Department of Labor has published a

final version of the Family and Medical Leave Act (FMLA) regulations pertaining to military families and qualifying exigencies. Among numerous significant modifications, the regulations define what a "qualifying exigency" is for purposes of being eligible for up to 12 weeks of FMLA leave. Families with active military personnel may now be eligible if they meet one of the new qualifications, such as short notice deployment, attendance at official military events, arranging or providing childcare, attending school meetings, handling financial and legal matters, and rest and recuperation visits when the soldier is on leave.

Mandatory Changes to 2009 Labor Law Posters. Mandatory changes to three of the notices California employers must display to explain workers' rights to employees include: (1) new federal Family and Medical Leave Act (FMLA) rules published on November 17, 2008; (2) changes to the Equal Employment Opportunity

(EEO) workplace poster; and (3) revised Employment Development Department (EDD) notice. In addition, there are new 2009 requirements to the following required pamphlets: Workers' Compensation Rights & Benefits pamphlets (required for new hires); State Disability Insurance pamphlets (required for new hires and employees taking non-work-related disability leave); Paid Family Leave (required for new hires and any employee taking a leave of absence); and Unemployment Insurance pamphlets (required for any employee who becomes unemployed). Employers may purchase the new required notices and pamphlets at the California Chamber of Commerce at <http://www.calbizcentral.com/Store/Products/Pages/PS12009.aspx>. Failure to post these required notices may result in fines up to \$17,000.

New 2009 IRS Mileage Rate. As of January 1, 2009, the IRS decreased the stan-

dard mileage deduction for business use of a motor vehicle to 55 cents per mile. (In the latter half of 2008 the standard mileage deduction was 58.5 cents per mile.)

Employers that use the IRS rate or lower may deduct that amount as a business expense. However, employees who receive higher reimbursement may be required to pay taxes on the difference between their employer's reimbursement rate and the IRS standard mileage deduction as "wages." Employers should notify their employees if they intend to change the reimbursement rate.

Please contact our office if you would like more information on any of these new laws or any of the other changes on workplace regulation for 2009. Please also contact us on any update of your employment forms and handbook to comply with these new laws. We wish you a productive and enjoyable new year.