

Knowledge Gives Employers New Law ‘Safety Net’

By Holly Culhane, Contributing Columnist



Most of us are familiar with the adage: Knowledge is power. But knowledge is much more to Kern County businesses. It is a critical “safety net” that will help employers maneuver through the increasingly dangerous regulatory minefield.

This month, hundreds of new state laws went into effect. These regulations are layered on top of federal laws and court decisions that mandate how businesses conduct their business, how they treat their workers and how they are held accountable.

On Wednesday, Jan. 25, P.A.S. Associates, will conduct a workshop for local businesses on these new laws. Bakersfield labor attorney Dan Klingenberger will walk participants through the new state and federal laws, regulations and court rulings.

“Overall, it’s more onerous to be an employer in California,” Klingenberger said about the new laws during a recent interview. “Changes in state laws make it more difficult to do business in California. And the penalties for non-compliance have been increased.”

And while there is some “good news,” such as the veto by Gov. Jerry Brown of a “card check” bill, which would have made unionizing agricultural workplaces much easier, Klingenberger is alarmed by trends that indicate the state’s willingness to move toward mandating leaves and benefits.

“There’s a potential trend when I look at the pregnancy disability leave, and organ and bone donor leave/benefits legislation,” said Klingenberger. “The tweaking of laws in these areas likely means the state is willing to implement other paid leave and benefits requirements in the future.”

And Klingenberger warns that his firm, Dowling, Aaron and Keeler, which specializes in defending employers, is handling an increasing number of wage and hour lawsuits.

“It’s one more way plaintiff law firms that specialize in class action lawsuits, have been getting enormous sums for minor infractions,” Klingenberger said. “Firms with 75 to 100 employees are starting to get nailed.”

Clearly learning about changes in the law is the first line of defense for local companies. By knowing and complying with the laws, companies can avoid scrutiny from government agencies and law firms.

The California Chamber of Commerce has compiled a list of more than 20 new state laws that are of particular concern to the state’s employers. From that list I note several that have unique application to Kern County businesses:

- **Written Commission Agreements.** AB 1396 requires employers who have commission pay arrangements to put those arrangements into a written contract. This requirement will affect a broad range of companies. While the requirement will not go into effect until 2013, companies now should begin formulating agreements.
- **Notice of Pay Details.** On the surface, AB 469 might seem to be no big deal. But it is. This law requires the written disclosures to new hires of information, including pay, overtime, commission, allowances, designated pay day, employer names (including “doing business as” names), address of main office, employer’s telephone number, and contact information for the workers’ compensation carrier. There are a lot of details in this disclosure requirement that can trip up an employer.

- **Farm Labor Contractors – Wage Notices.** Considering the importance of the agriculture industry to Kern County, AB 243 can have a profound effect. It expands the information farm labor contractors must include on pay statements. For example, if an employee works at four companies during a pay period, the contractor has to show information for each company on the pay stub. This law likely will be complicated to implement. If a labor contractor gets it wrong, he will be open to enforcement action, and wage and hour claims, including class action lawsuits.
- **Agricultural Labor Relations.** Most agree that SB 126 is a good compromise and a lot less onerous than the “card check” bill that farm worker advocates proposed, and both Govs. Arnold Schwarzenegger and Jerry Brown vetoed. This law empowers the Agricultural Labor Relations Board to certify a labor union as the exclusive bargaining agent of employees if sufficient evidence exists that the employer engaged in misconduct that affected the results of an organizing election.
- **Credit Card Check.** AB 22 prohibits employers and prospective employers from obtaining and using consumer credit reports about applicants and employees.
- **Misclassification of ‘Independent Contractor.’** SB 459 establishes penalties for classifying employees as “independent contractors” to avoid paying payroll taxes and benefits.

Other new state laws affecting businesses deal with pregnancy disability leave and the requirement for employers to pay their portion of an employee’s health insurance during this leave; organ and bone marrow donor leave; interfering with rights under “leave laws;” employers’ use of workers’ genetic information; discrimination based on gender identity and “gender expression;” and E-Verify mandates to check workers’ or applicants’ immigration status.

Additional information about 2012 laws and regulations can be obtained from the California Chamber of Commerce (www.calchamber.com), the California Department of Industrial Relations (www.dir.ca.gov) and P.A.S. Associates (www.PASassociates.com).

This article written by Holly Culhane first appeared online and in The Bakersfield Californian on Friday, January 12, 2012. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website www.pasassociates.com and through the [PAS Facebook](#) page or by phone at 631-2165.

EVENT BOX

What: 2012 Legal Update

Who: Bakersfield labor attorney Dan Klingenberger

When: Wednesday, Jan. 25., 8 a.m. to 11 a.m.

Where: P.A.S. Training Center, 1401 19th St., Suite 110

Cost: \$95 per person general public; free to retainer clients

Enroll: Go to www.PASassociates.com

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