

California Enacts New Employment Laws Impacting Community Associations And Management Companies

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On October 9, 2011, Governor Brown signed into law several new bills impacting California community associations as well as their managing agents who are employers. These new laws include the imposition of penalties for “willfully misclassifying” workers as independent contractors and the creation of a new definition of “gender” when interpreting California’s anti-discrimination statutes to include gender identity and transvestitism. The following is a summary of some of the new laws that will have the biggest impact on California community associations:

Willful Misclassification of Workers as Independent Contractors

Newly enacted Assembly Bill No. 459 prohibits the willful mischaracterization of individuals as independent contractors. By far, this new law will have the biggest impact on California community associations as many do have workers that are classified as independent contractors when they are really employees.

Currently, the law requires employers to comply with certain policies regarding compensation and working conditions for employees that do not apply to independent contractors. AB 459 provides a complaint procedure and allows for the assessment of liquidated damages against any employer who willfully mischaracterizes a worker as an independent contractor and authorizes the Labor and Workplace Development Agency to assess civil penalties against those violating statute.

In addition, anyone who knowingly advises an employer to mischaracterize a staff person as an independent contractor rather than an employee could be jointly and severally liable along with the employer.

Gender Identity and Gender Expression Discrimination

Assembly Bill No. 887 alters the meaning of gender for the purposes of discrimination laws that define sex as including gender so that California law now prohibits discrimination on the basis of gender identity and gender expression. Gender identity and gender expression include a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. AB 887

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requires employers to allow employees to appear or dress consistently with that employee's gender expression.

Prohibition on Use of Credit Reports in Employment

Do you now consider credit reports when hiring new employees? Assembly Bill No. 22 limits the ability of employers to use credit reports for employment purposes. Currently, employers in California can, with the prospective employees consent, obtain an employee's or applicant's credit report, regardless of the employee's position or the position the applicant is seeking to fill. AB 22, however, limits California employer's to obtaining credit reports for those employees or applicants who are employed or seek to be employed in one of eight position types, including: (1) a position in the state Department of Justice; (2) a managerial position as defined by the stringent exempt status definition; (3) that of a sworn peace officer or other law enforcement position; (4) a position for which the information contained in the report is required by law to be disclosed or obtained; (5) a position that involves regular access to specified personal information for any purpose other than the that the routine solicitation and processing of credit card applications in a retail establishment; (6) a position in which the person is or would be named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf; (7) a position that involves access to confidential or proprietary information, as specified; or (8) a position that involves regular access to \$10,000 or more, as specified.

Increased Penalties for Wage Violations

Assembly Bill No. 469 requires that an employer provide notice specifying the rate and basis of the employee's wages to each individual employee at the time of hiring, in addition to the prior notice posting requirements. Similarly individualized notice must be provided within 7 days for any changes to the rate or basis of the employee's wages.

AB 469 also imposes more stringent penalties and requirements on employers with respect to wage violations. Currently, the California Labor Commissioner may investigate and enforce wage payment

requirements by subjecting employers to civil and criminal penalties. AB 469 imposes an additional requirement that employers pay restitution of wages to the employee. Further, AB 469 makes it a misdemeanor to willfully violate wage statutes, orders, final court judgments or final orders of the Labor Commissioner.

AB 469 also extends the statute of limitation for collecting statutory penalties from one year to three years from the violation date.

Interference with California Family Rights Act Leave

Assembly Bill No. 592 makes it an unlawful employment practice for any employer to interfere with or otherwise prevent or attempt to prevent an employee from exercising rights under the California Family Rights Act. This existing law makes it an unlawful employment practice to deny an employee's request for parental, pregnancy or medical leave as well as leave to care for an ill family member. Further, the law currently makes it an unlawful employment practice to refuse to allow employees who are pregnant or who have just given birth to take leave; moreover, it is an unlawful employment practice to refuse to provide these employees with a reasonable accommodation. AB 592 also prohibits interfering with or attempting to prevent an employee from exercising their rights under the Act as an unlawful employment practice.

Domestic Partner Discrimination in Health Insurance

Senate Bill No. 757 makes it a crime to willfully violate the Knox-Keene Health Care Service Plan Act of 1975 by discriminating in coverage between spouses or domestic partners of a different sex and those in same-sex marriages or domestic partnerships. Group coverage must be provided to spouses and domestic partners in same-sex relationships on the same basis as provided to those in different sex relationships.