

January 19, 2024

MEMORANDUM FOR CLIENTS AND FRIENDS OF THE FIRM:

Re: 2024 California Employment Law Update

Businesses with employee worksites in California should be aware of upcoming notice deadlines and recent changes affecting the California workplace. Below is a summary highlighting some issues to be aware of if you own or manage a business in California.

Employers should notify current and former employees subject to non-compete provisions in their employment agreements by February 14, that those provisions are not enforceable under California law. A general notice will not suffice; notices should be individually sent to each relevant employee in writing. The notice should also be sent to any affected employee who entered into the agreement outside of the State of California (e.g., in a state where such provisions were or remain enforceable), and subsequently relocated to California. Failure to issue the notice may subject the employer to civil penalties for violation of the state's unfair competition law.

By July 1, employers with offices in California should adopt a workplace violence prevention plan; employers with less than ten employees present at their California worksite may be exempt, depending on specific criteria. The Workplace Violence Prevention Plan should be a written document addressing training of employees and supervisors on workplace violence matters, and providing for record keeping of training and any relevant workplace incidents. The Division of Occupational Safety and Health of California may release a template in the coming months of a plan it deems compliant with the new law.

California employee rights to time off should also be updated to be compliant with new legislation. Absent stricter local laws (e.g., San Francisco), full time employees should be granted annually no less than five days of paid sick leave. An employer with more than five employees should be aware of related legislation focused on rights for employees pertaining to a "reproductive loss event". Such an event includes a failed adoption, failed surrogacy, miscarriage, stillbirth or an unsuccessful assisted reproduction. California law already grants employees at least five days of bereavement leave; the new legislation expressly grants at least

five days of leave for a reproductive loss event. The leave may be unpaid, though employees may use vacation time, accrued sick leave or other paid time off to continue being paid while on reproductive loss event leave.

Finally, be aware of new laws affecting employer rights to discipline or terminate California employees. An employer in California may no longer discriminate against an employee for off-duty use of cannabis. Consequently, employee discipline or termination can no longer be justified based on such off-duty use. More importantly, there is now a rebuttable presumption of retaliation against any employee disciplined or terminated within 90 days of engaging in any protected activity. Protected activity includes disclosing an employee's own wages, asking about the wages of others, complaining about unpaid wages or helping another employee exercise their rights. Issuing well documented performance improvement plans, and providing ample time (e.g., over 90 days) to measure performance, are helpful tools when considering how to discipline or terminate an employee.

If you have questions about compliance with state or federal employment law matters, I invite you to contact me.

Michael R. Geroe