

CALENDAR

**2012 C.A.R. News
Release Schedule**

- Jan. 17: December Existing Home Sales
- Jan. 24: December Pending Sales Index
- Feb. 9: 4Q2011 Housing Affordability
- Feb. 15: January Existing Home Sales
- Feb. 23: January Pending Home Sales Index
- Mar. 15: February Existing Home Sales
- Mar. 26: February Pending Home Sales Index
- Apr. 16: March Existing Home Sales
- Apr. 24: March Pending Home Sales Index
- May 11: 1Q2012 Housing Affordability
- May 15: April Existing Home Sales
- May 22: April Pending Home Sales Index
- June 15: May Existing Home Sales
- June 22: May Pending Home Sales Index
- July 17: June Existing Home Sales
- July 24: June Pending Home Sales Index
- Aug. 10: 2Q2012 Housing Affordability
- Aug. 17: July Existing Home Sales
- Aug. 23: July Pending Home Sales Index
- Sept. 17: August Existing Home Sales
- Sept. 24: August Pending Home Sales Index
- Oct. 2: Housing Market Forecast
- Oct. 15: September Existing Home Sales
- Oct. 22: September Pending Home Sales Index
- Nov. 12: 3Q2012 Housing Affordability
- Nov. 15: October Existing Home Sales
- Nov. 21: October Pending Home Sales Index
- Dec. 14: November Existing Home Sales
- Dec. 21: November Pending Home Sales Index

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<http://www.car.org/media/>

Courtside Newsletter

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WARNING TO EMPLOYERS:

NEW 2012 EMPLOYMENT LAWS

BY: SYLVIA J. SIMMONS, ATTORNEY



SB 459: Misclassification of Independent Contractors

Senate Bill 459 amends the California Labor Code, Section 226.8, to prohibit the willful misclassification of an individual as an independent contractor. "Willful misclassification" is defined as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." The bill prohibits charging individuals who have been mischaracterized as independent contractors a fee or making deductions from compensation that would have violated the law if the individuals had not been misclassified.

To reflect the seriousness of willfully misclassifying an employee, if the Labor and Workforce Development Agency or a court determines that a violation has taken place, the penalty is \$5,000 per incident. If the violator has a pattern or practice of willfully misclassifying employees, the penalty will be no less than \$10,000 and could go up to \$25,000. The violator will also be ordered to post a notice signed by an officer for one year that states: (1) what the violation was, (2) that their business practices have been changed to avoid committing further violations, (3) that employees who believe they are misclassified may contact the Labor and Workforce Development Agency, and (4) that the notice is posted pursuant to State order. A licensed contractor who is found to have violated Section 226.8 will be reported to the Contractors' State License Board for disciplinary action.

Additionally, any person who knowingly advises an employer to treat an individual as an independent contractor to avoid employee status may be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

AB 469: Wage Theft Protection Act of 2011

Effective January 1, 2012, Assembly Bill 469

added Section 2810.5 to the California Labor Code, Wage Theft Prevention Act of 2011. Employers are now required to provide non-exempt employees with written notice at the time of hire containing the following specific wage-related and employer information:

1. The rate or rates of pay, the basis for the rate, and whether it is paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime.
2. Any allowances claimed as part of the minimum wage, including meal or lodging allowances.
3. The regular payday.
4. The name of the employer, including any "doing business as" names used by the employer.
5. The physical address of the employer's main office or principal place of business and a mailing address, if different.
6. The telephone number of the employer.
7. The name, address, and telephone number of the employer's workers' compensation insurance carrier.
8. Any other information the Labor Commissioner deems material and necessary.

If any changes are made to this information, non-exempt employees must be notified in writing within seven calendar days of change.

The Act also increases civil penalties for wage violations, such as employers paying less than minimum wage, and increases the statute of limitations. The full text of the Act can be found on the Department of Industrial Relations' website. The Labor Commissioner is developing a guide/FAQ for employer compliance that should be available this month. It will be found at

www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html.

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SB 272: Leaves of Absence for Organ and Bone Marrow Donation

Senate Bill 272 amends Labor Code Section 1510 current law regarding leaves of absence for employees who donate an organ or bone marrow to another person. Current law provides a leave of absence for an organ donor of 30 days within a one-year period and a leave of absence for a bone marrow donor of five days within a one-year period. SB 272 clarifies that those are "calendar days" not "business days" and that the one-year time period will begin on the first day of the employee's leave. The leave of absence will not be considered a break in the employee's continuous service for the purposes of the right to time off. The employee will still be entitled to coverage under a group health plan. The employer retains its right to negotiate an employee benefit plan that will be better than an existing plan and no rights provided under Section 1510 will be diminished by an employee benefit plan entered into on or after January 1, 2011. The employer may require the employee take up to five days of earned but unused sick leave, vacation, or paid time off for bone marrow donation, or up to two-weeks of earned but unused sick leave, vacation, or paid time off for organ donation. The employee's leave for donation cannot be taken concurrently with any other leave taken pursuant to the federal Family and Medical Leave Act of 1993 or the Moore-Brown-Roberti Family Rights Act. The leave can, however, be taken in one or more periods, but still cannot exceed the time allotted.

SB 299: Pregnancy Disability Leave

Under current law, it is unlawful for employers to discriminate based on sex or disability or to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a reasonable leave of absence for said conditions. SB 299 amends California Government Code Section 12945 to include that it is also unlawful for an employer to refuse to maintain and pay for coverage under a group health plan for eligible female employees who take leave. However, the premium paid by the employer can be recovered from the employee if: (1) the employee fails to return to work after the term of the leave that the employee is entitled to expires; or (2) the employee fails to return from leave for a reason other than they are on leave under the Moore-Brown-Roberti Family Rights Act; or (3) if the employee is

entitled to additional leave due to continuation, recurrence, or onset of a health condition. The amendment makes it unlawful to refuse to accommodate an employee for a condition related to pregnancy, childbirth, or a related condition if she requests the accommodation based on the advice of her healthcare provider.

AB 551: Penalties for Contractor's Violation of Labor Code

Assembly Bill 551 amends several sections of the Labor Code to increase penalties for violations of various Labor Code provisions regulating contractors and subcontractors on public works contracts.

Section 1775 is amended regarding failure to pay minimum wages: The penalties are increased for contractors and subcontractors who pay less than the minimum per diem wage to their employees. Under existing law, the penalty is \$10 to \$50 per calendar day. Effective January 1, 2012, the penalty will be \$40 to \$200 per calendar day. The penalty is determined by the Labor Commissioner based on: (1) whether the employer intended not to pay per diem wage or whether it was a good faith mistake that was promptly rectified, and (2) whether the employer has a prior record of failing to meet prevailing wage obligations. If the employee was employed by a subcontractor, the prime contractor will not be liable for the penalties if the prime contractor: (1) had no knowledge of the subcontractor's failure to pay prevailing wages; and (2) attempted to take corrective action once becoming aware of the subcontractor's discrepancy.

Section 1776 is amended regarding contractor and subcontractor payroll records and the inspection of said records. The penalty for not complying with a written request for payroll records within 10 days is \$100 each calendar day the contractor or subcontractor is delinquent.

Section 1777.1 is amended to provide that a contractor or subcontractor who is in violation will be unable to bid or perform work on a public works project for a minimum of one year or a maximum of three years. If payroll records are not produced within 30 days of a written request, in addition to the per diem fine, the contractor or subcontractor may be subject to debarment. ■

This article discusses only a few of the employment laws that go into effect on January 1, 2012. A more extensive list of the new laws can be found at www.calchamber.com. To ensure that your business will be in compliance with all applicable laws, it is recommended you consult with an attorney at your earliest convenience.

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BUSINESS TIPS

New Forms of Corporations Available

California businesses may form two new types of stock corporations in 2012. These new types of corporate formations are called "flexible purpose corporations" (Corp. Code 2500-3503) and "benefit corporations" (Corp. Code 14600-14631). Previously, corporations could be for profit or nonprofit to solely promote social benefits. Now, corporations may be formed to pursue both economic and social objectives by filing "free-form Articles of Incorporation" that include the unique purposes for the specific entity, rather than the simple Articles of Incorporation form provided on the Secretary of State's website. The same \$100 filing fee applies.

Articles for a flexible purpose corporation must state one of the purpose statements required by Corp. Code 2602(b)(1), and must state that the corporation will engage in one or more of the specific purposes provided in Corp. Code 2602(b)(2). Further requirements for a flexible purpose corporation are provided in Corp. Code Division 1.5 (commencing with Section 2500).

Articles for a benefit corporation must include this statement: "This corporation is a benefit corporation." One or more specific public benefits may be stated as the purpose(s) of the benefit corporation. Further requirements are Corp. Code 14600 *et seq.*

Consultation with an attorney is advised when forming any corporation, especially a new flexible purpose or benefit corporation. For more information on forming a corporation, please contact our office.

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