

FOR 2013: PREVENTIVE MEASURES FOR CALIFORNIA EMPLOYERS

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California employers are starting off the new year facing uncharted waters from a regulatory perspective. Complicating concerns over increased business costs, decreased revenues and the threat of falling over the “fiscal cliff,” employers forecasting for 2013 recognize that an employment law Bermuda Triangle has been created by the California Legislature, California courts as well as federal and state agencies.

Notwithstanding potential obligations in 2014 regarding the Affordable Health Care Act, the triangle in 2013 consists of new legislation expanding employer obligations and incentivizing litigation, case law creating ambiguities on operational compliance measures and administrative regulations imposing additional oversight measures.

Successfully navigating through these rough regulatory waters requires employers to immediately implement risk prevention tools. The following provides suggestive preventative measures for employers to consider when proceeding forward into the new year.

- Prepare Comprehensive Written Commission Agreements
- Implement Compliant Social Networking Policies That Are Enforced Properly
- Acknowledge Extension of Definitions of Various Protected Categories under the California Fair Employment and Housing Act (FEHA)
- Audit Wage Statements and Personnel Files
- Review the Usage of Criminal Background Checks
- Determine Whether There Is Compliance With The Recent Brinker Decision

- Prepare Concise Performance Reviews That Reach Objective, Non-Discriminatory Conclusions

The trend of increased legislation and regulation seeks to continue in 2013 with the California Legislature and Governor Brown working together on several pieces of legislation. The United States Supreme Court's recent announcement of its review of the Defense of Marriage Act and class arbitration issues in the Oxford health plans case confirms that judicial decisions will also dramatically affect the regulatory climate.

With the awareness of the new legislation, case law and administrative decisions, coupled with the investment in preventative practices identified above, employers can hopefully avoid turbulent employee disputes and enjoy smoother waters in the new year.

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