

CALIFORNIA EMPLOYERS' NEW YEAR'S RESOLUTION: MAKE THESE 2 KEY CHANGES TO THE MANDATORY NOTICE YOU GIVE TO NEW HIRES

Insights
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All California employers will need to make two changes to the mandatory notice you provide to your new hires as of January 1: you need to tell them about changes to California's paid sick leave law, and you need to provide information about any recent emergency or disaster declarations. Legislative changes that kick in as 2024 starts mean that the written notice you provide workers at the time of hire (thanks to the Wage Theft Prevention Act) needs to include information about these two developments. So while you are preparing for your New Year's festivities and preparing to binge watch some college football bowl games, don't neglect to update your Wage Theft Prevention Act Notice as well. Here's everything you need to know about these changes.

Refresher on the Wage Theft Prevention Act Notice

California employers are required to provide new hires with a written notice that contains specified information related to:

- Rates of pay (and basis thereof);
- Allowances (such as meal or lodging);
- Timing of regular paydays;
- The name, address, and telephone number of the employer;
- The name, address, and telephone number of the employer's workers' compensation insurance carrier;

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Benjamin M. Ebbink

Partner

916.210.0400

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- Specified information related to paid sick leave; and
- Additional information if the employer is a temporary services employer.

Notably, the law also provides that the notice shall include “any other information the Labor Commissioner deems material and necessary.”

In addition, the law requires employers to notify employees in writing of any changes to the aforementioned information (within seven calendar days) unless all changes are reflected on a timely wage statement or another writing required by law.

Change # 1 – Updated Paid Sick Leave Requirements

As most California employers are aware, state law will increase the amount of paid sick leave that employers must provide as of January 1 – going from three days or 24 hours to five days or 40 hours.

As a result, you will need to amend the portion of the Wage Theft Prevention Act notice to reflect these new amounts.

In addition to the new amounts, the existing law requires the notice to inform employees that they may accrue and use sick leave, request and use accrued sick leave, may not be terminated or retaliated against, and have a right to file a complaint against an employer who retaliates.

Change # 2 – Federal or State Emergency or Disaster Declarations

New legislation enacted this year (AB 636) also adds a completely new item that must be included on these notices:

- The existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee’s first day of employment, that may affect their health and safety during their employment.

This new requirement will pose challenges to employers as you will now be required to monitor such information and include it in your notices.

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The California OES [website](#) lists open state of emergency proclamations and employers should monitor FEMA declarations as well. Unfortunately, state emergency declarations can be open for years (in order to draw down federal funding). For example, there are currently open emergency proclamations in California dating back to 2015. Thankfully, AB 636 says that the notice must only include the existence of a declaration that was “issued” within 30 days before the employee’s first day of employment.

Employers will also need to pay attention to which county or counties are covered by any particular declaration and focus on where the employee is employed. At this early juncture, it appears likely that employers will have to exercise some judgment in determining whether any particular declaration “may affect their health and safety.” Certain declarations pertaining to things like pandemics (COVID-19) and possibly wildfires or other natural disasters may affect employee health and safety. But other types of emergencies or disasters likely do not.

In addition, as discussed more below, the Division of Labor Standards Enforcement’s (DLSE’s) updated Wage Theft Prevention Act notice template also state “how” the emergency or disaster declaration may affect health and safety.

Note for Agricultural Employers: Additional Change for H2-A Visa Workers

For most employers, necessary changes to the notice will be limited to the two issues discussed above.

However, for employers with employees who are admitted under the federal H2-A agricultural visa program, AB 636 imposes a new notice obligation. The notice provided to such workers must include a separate and distinct section (in Spanish) containing information describing an agricultural employee’s additional rights and protections under specified California law and regulations.

This specific requirement will kick in on March 15, 2024, and the Labor Commissioner is required to publish a template for this new H2-A worker notice by March 1, 2024.

DLSE Updates Notice Template

DLSE recently updated the English version of their Wage Theft Prevention Act [notice template](#) to reflect these new changes (with the exception of the H2-A notice requirements). Unfortunately, [their FAQs](#) have not been updated (at least at the time of this Insight).

Employers are not required to use the DLSE notice template, but they may do so. Employers who instead use their own notice must ensure that it contains all of the elements of the notice required by law. Specifically, an FAQ previously issued by DLSE says that “employers can develop their own notices so long as they contain all the information required by the law, including all the information requested on DLSE’s template. The template includes all required information, including that which the Labor Commissioner deems material and necessary for purposes of the notice.”

In its recent update to the notice, DLSE appears to include information that goes beyond the statutory requirement of AB 636. The law requires employers to provide notice of the “existence” of an emergency or disaster declaration that may affect their health and safety. The DLSE notice template goes one step further and also requires employers to state “how” it may affect health or safety.

Unfortunately, this is not unprecedented. Previous versions of the DLSE’s notice template similarly went beyond the express language of Labor Code Section 2810.5 and included additional information not specifically mandated by the statute. However, as discussed above, the statute has broad, catch-all language and provides that the notice must include “any other information the Labor Commissioner deems material and necessary.”

Employers may wish to consult with counsel before deciding whether to use the DLSE template or their own version.

Conclusion

As you are sitting down over the next few days to come up with your list of New Year’s resolutions, you will likely be considering some of the old standbys. Eat healthier. Get more exercise. Spend more quality time with family and loved ones. But don’t forget to include on that list these required changes to your Wage Theft Prevention Act notice.

Should you need assistance with updating your notice, please contact your Fisher Phillips attorney, the author of

this insight, or any of our attorneys in [our California offices](#). We will continue to monitor for updates, so make sure you subscribe to [Fisher Phillips' Insight System](#) to gather the most up-to-date information on the workplace.