

January 2012— New Employment Legislation for 2012

At the end of 2011, Governor Jerry Brown signed into law a number of new bills addressing employment-related issues that will significantly impact employers in 2012. Many of these laws will require review of employee handbooks to ensure compliance. This alert provides an overview of the most significant of these new laws. Unless otherwise indicated, the laws went into effect on January 1, 2012.

New Laws Related to Employee Screening

AB 22: Consumer Credit Reports

Under AB 22, an employer or prospective employer is prohibited from obtaining or using a consumer credit report for employment purposes. Certain exceptions apply when the position sought or occupied is one of the following:

- (1) A position in the California Department of Justice;
- (2) A managerial position (defined as a position that qualifies for the executive exemption from overtime);
- (3) A sworn peace officer or other law enforcement position;
- (4) A position for which credit information is required by law to be disclosed or obtained;
- (5) A position that involves regular access (other than in connection with routine solicitation of credit card applications in a retail establishment) to people's bank or credit card account information, social security number, and date of birth;
- (6) A position in which the person would be a named signatory on the bank or credit card account of the employer, authorized to transfer money on behalf of the employer, or authorized to enter into financial contracts on behalf of the employer;
- (7) A position that involves access to confidential or proprietary information (defined as a legal "trade secret" under Civil Code 3426.1(d)); or
- (8) A position that involves regular access to cash totaling \$10,000 or more.

The law does not apply to financial institutions and those employers required by law to conduct credit checks.

Even if the employer is permitted to obtain a credit report under one of the exceptions outlined above, the employer must provide prior written notice to the applicant or employee that specifies the permissible basis for requesting the report. The notice must also inform the person of the source of the credit report, and shall contain a box for the employee or applicant to check to request a copy of the report. The report must be provided free of charge and contemporaneously with the employer's receipt of the report. If employment is denied based on information in a credit report, the employer must advise the applicant or employee and provide the name and address of the credit reporting agency that supplied the report.

New Wage and Hour Laws

AB 240: Liquidated Damages

Existing law permits an employee to recover liquidated damages in court actions alleging payment of less than the state minimum wage. AB 240 allows an employee claiming a minimum wage violation to recover liquidated damages pursuant to a complaint brought before the Division of Labor Standards Enforcement. AB 240 also permits the Labor Commissioner to award liquidated damages for failure to pay the minimum wage. The liquidated damages recoverable equal the amount of wages unlawfully unpaid, plus interest.

AB 469: Required Notice at Hire / Wage Penalties

Known as the Wage Theft Prevention Act of 2011, AB 469 requires employers to provide each nonexempt employee, at the time of hire, with a written notice that includes the following information:

- (1) The pay rate and the basis, whether hourly, salary, commission or otherwise, as well as any overtime rate;
- (2) Allowances, if any, claimed as part of the minimum wage, includes meals or lodging;
- (3) The regular payday designated by the employer;
- (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; and
- (8) Any other information the Labor Commissioner deems material and necessary.

The Labor Commissioner is required by the law to publish a template notice that employers can use as a model. The employer must notify all non-exempt employees (not merely new hires) in writing of any changes to the information set forth in the notice within seven calendar days of the changes, unless such changes are reflected on a timely wage statement furnished in accordance with Labor Code 226 or other writing required by law to be provided.

Exempt from this notice requirement are (1) an employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district; (2) an employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission; (3) an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

AB 469 also imposes more stringent penalties and requirements on employers with respect to wage violations. First, AB 469 requires that an employer who pays an employee less than the minimum wage fixed by a wage order of the Commission is subject to paying restitution to the employee, in addition to civil penalties. Second, AB 469 makes it a misdemeanor to willfully violate wage statutes or orders, or to willfully fail to pay a final court judgment or final order of the Labor Commissioner for wages due. Third, AB 469 extends the statute of limitations for the Division of Labor Standards Enforcement to collect statutory penalties and fees from the present one-year period to three years. Finally, AB 469 extends the time required for an employer who has been convicted of subsequent wage violations to maintain a bond from six months to two years and requires that a subsequently convicted employer provide an accounting of assets to the Labor Commissioner.

AB 1388: Wage Garnishments

Current law requires employers to withhold the amounts required by an earning withholding order from all earnings of the employee payable for any pay period of the employee that ends during the withholding period. The portion of the judgment debtor’s earnings that the judgment debtor proves is necessary for the support of the judgment debtor or his or her family is exempt from the levy of an earnings withholding order.

AB 1388 adds an exemption from wage garnishment for debt that is incurred “for the common necessities of life furnished to the judgment debtor” or his or her family, including, e.g., hospital services and other medical debts.

AB 1396: Commission Agreements

Effective January 1, 2013, whenever an employer enters into an employment contract with an employee for services performed in California and the employee’s compensation involves commissions, the contract must be in writing and set forth the method by which the commissions will be computed and paid. The employer must give a signed copy of the contract to the employee and must retain the employee’s signed receipt of the contract. In the event the contract expires, but the parties nevertheless continue to work under the expired contract, its terms are presumed to

remain in full force and effect until either the contract is expressly superseded by a new contract or the employment relationship is terminated.

“Commissions” are defined in accordance with Labor Code 201.4 as compensation paid to any person in connection with the sale of the employer’s property or services and based proportionately upon the amount or value thereof. However, “commissions” does not include short-term productivity bonuses or bonuses and profit-sharing plans, unless they are based on the employer’s promise to pay a fixed percentage of sales or profits as compensation for work.

New Laws on Employee Leave

AB 592: Interference with California Family Rights Act (CFRA) and Pregnancy Disability Leave (PDL)

Prior to the passage of AB 592, California law only expressly prohibited an employer from refusing to allow an employee to take PDL or CFRA leave. AB 592 adds language to CFRA and PDL that makes it an unlawful employment practice to “interfere with, restrain, or deny the exercise or the attempt to exercise” rights under these laws. Accordingly, an employer who interferes with or attempts to restrain an employee’s exercise of his or her rights under these statutes through disciplinary action or other means may be subject to liability for an unlawful employment practice. This added language is similar to what is already contained in FMLA, and thus, should not be a major change to existing law or an employer’s legal obligations.

SB 272: Bone Marrow and Organ Donation Leave

Existing law requires employers to provide employees with a paid leave of absence of five days for bone marrow donation or thirty days for organ donation, within a one-year period. SB 272 clarifies that the one-year period referenced in the statute is twelve consecutive months from the date the employee’s leave begins, not a calendar year. SB 272 also confirms that the days of leave are business days, as opposed to calendar days. Moreover, SB 272 provides that the benefits of an employee must be maintained at the same level during the paid leave, as if the employee had continued to work during that period. Finally, SB 272 specifies that employers that have a paid time off program can require that an employee take up to five days of earned but unused paid time off for bone marrow donors, and up to two weeks of earned but unused paid time off for organ donors, as a condition of the employee’s leave.

SB 299: Health Insurance during Pregnancy Disability Leave

Under SB 299, employers will be required to maintain and pay for health insurance coverage under a group health plan for any eligible female employee who takes a leave of up to four months due to pregnancy, childbirth, or a related medical condition in a twelve-month period. The benefits must be maintained at the same level and under the same conditions as would have been provided if the employee had continued in employment continuously for the duration of the leave. Employers can recover the cost of the insurance premiums paid on behalf of the employee for the continued coverage if the employee fails to return from leave after the expiration of the leave, unless the failure to return from leave is due to (a) the employee taking leave under the California Family Rights Act (“CFRA”), or (b) the continuation, recurrence or onset of a health condition that entitles the employee to additional leave or other circumstances beyond the employee’s control.

This law was intended to provide medical health insurance coverage during pregnancy disability leave (“PDL”) for those women who are not covered by the federal Family and Medical Leave Act (“FMLA”) and CFRA. For example, unlike those laws, PDL does not establish a minimum amount of time that an employee must have worked at an employer to qualify for PDL, so employees who have been employed by their employer for only a short amount of time will benefit from this law. In addition, the FMLA and CFRA only apply to employers with 50 or more employees working within a 75-mile radius, whereas PDL applies to employers with five or more employees.

New Laws on Discrimination

AB 887: Gender Identity and Expression

AB 887 expands the definition of “gender” in various nondiscrimination laws, including the Fair Employment and Housing Act and the Unruh Civil Rights Act, to include “gender identity” and “gender expression” and prohibits workplace discrimination on these bases. “Gender identity” is defined to mean a person’s deeply internal sense of being male or female. “Gender expression” refers to a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth. AB 887 also requires employers to allow an employee to appear or dress consistently with the employee’s gender expression and gender identity.

This new law adds to the already long list of protected classes under California law, and expands the potential victims of unlawful discrimination and harassment accordingly. Employers will need to include this new class in anti-discrimination and anti-harassment policies, and train supervisors accordingly.

SB 559: Genetic Information

The Fair Employment and Housing Act, together with the Unruh Civil Rights Act, prohibit discrimination in employment, housing, public accommodation, and services provided by business establishments on the basis of various personal characteristics such as sex, race, color, national origin, religion, and disability. SB 559 adds genetic information to the list of prohibited practices. “Genetic information” is broadly defined, and includes information about an employee’s genetic tests, the genetic tests of an employee’s family members, and the manifestation of a disease or disorder in an employee’s family members. It also includes any request for or receipt of genetic services by an employee or family member. Discrimination in hiring or employment based on genetic information now is unlawful.

SB 559 supplements the federal Genetic Information and Nondiscrimination Act of 2008 whose range of protections were deemed incomplete by the California legislature. SB 559 includes not only the areas of housing and employment generally, but also state-administered and funded programs, licensing boards, and life insurance coverage.

SB 757: Registered Domestic Partner Non-Discrimination

SB 757 expands on existing law, which required health care service plans and health insurance policies to provide group coverage to an employee’s registered domestic partner that is equal to the coverage it provides to an employee’s spouse. SB 757 specifies that a policy or plan cannot discriminate in coverage between spouses or domestic partners of a different sex and spouses or domestic partners of the same sex.

Additionally, any group health care service plan contract and any group health insurance policy that is marketed, issued, or delivered to a California resident must comply with California’s requirements to provide coverage to domestic partners that is equal to the coverage provided to spouses. Furthermore, SB 757 provides that any policy or certificate of health insurance marketed, issued or delivered to California residents cannot discriminate in coverage between spouses or domestic partners of a different sex and spouses or domestic partners of the same sex. There is an exception for a policy issued outside of California to an employer with a majority of its business and employees located outside of California.

New Laws Related to Independent Contractors

SB 459: Misclassification of Independent Contractors

SB 459 creates harsh penalties for the willful misclassification of employees as independent contractors. The law defines “willful misclassification” as “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” In the event of a finding of willful misclassification, SB 459 gives the Labor and Workforce Development Agency the authority to assess civil penalties of \$5,000 to \$15,000

per violation, in addition to other penalties or fines permitted by law (including additional civil and liquidated damages authorized to be assessed by the California Labor Commission). Violators found to have engaged in a pattern or practice of willful violations are subject to a civil penalty of \$10,000 to \$25,000 per violation. The law also makes it unlawful for an employer to charge an individual who has been willfully misclassified any fees or other deductions from compensation if those fees and deductions (licenses, space rental, equipment) would have been prohibited had the individual been properly classified as an employee.

Additionally, under SB 459, an employer in violation may be ordered to display prominently on its Internet web site (or other area accessible to employees and the general public) a notice that contains the following: (1) the employer has been found guilty of committing a serious violation of the law by willfully misclassifying employees; (2) the employer has changed its practice to avoid committing future violations; (3) any employee who believes that he or she is misclassified may contact the Labor and Workforce Development Agency; (4) the notice is being made pursuant to state order; and (5) the signature of an officer or owner of the employer.

The new law imposes joint and several liability on individuals who, for money or other valuable consideration, knowingly advise an employer to treat an individual as an independent contractor to avoid employee status. Exceptions from liability are employees who provide advice to their employer, and licensed attorneys providing legal advice.

New Laws on Public Works Projects

AB 514: Hauling of Refuse

Under current law, the definition of “public works” includes the hauling of refuse from a public works site to an outside disposal location. All workers engaged on public works are to be paid not less than the prevailing rate of per diem wages. AB 514 includes in the definition of “hauling of refuse” the hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. “Hauling of refuse” does not include the hauling of recyclable metals such as copper, steel and aluminum that have been separated from other materials at the jobsite prior to transportation and that are sold at fair market value to a bona fide purchaser. Such inclusion expands the definition of “public works” and requires the payment of prevailing wages for that activity.

AB 551: Prevailing Wage Penalties

Existing law generally requires that workers employed on a public works project be paid not less than the general prevailing rate of per diem wages. AB 551 increases the maximum penalty from \$50 to \$200 per calendar day for each worker paid less than the prevailing wage. Likewise, the minimum penalty is increased from \$10 to \$40 per calendar day per worker except in certain cases of a good faith mistake. AB 551 also increases the penalty assessed to contractors and subcontractors with prior violations from \$20 to \$80 per calendar day, and from \$30 to \$120 per calendar day for willful violations.

Second, existing law requires each contractor and subcontractor performing work on a public works project to keep accurate payroll records for his or her employees, and to provide such records within ten days after receipt of a written request. AB 551 increases the penalty from \$25 to \$100 per calendar day per worker for the failure to respond to a request for payroll records.

Third, AB 551 makes a contractor or subcontractor on a public works project who has committed two or more separate willful violations relating to payment of prevailing wages within a three-year period ineligible to either bid on or be awarded a contract or perform work as a subcontractor on a public works project for up to three years.

Fourth, under AB 551, whenever a contractor or subcontractor performing work on a public works projects has failed to provide a timely response to a request by the Division of Apprenticeship Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records, the Labor Commissioner is required to notify the contractor or subcontractor that he or she will be subject to debarment if the certified payroll records are not produced within thirty days after receipt of the written notice. Additionally, failure to produce the payroll records will make the contractor or subcontractor ineligible to bid on or be awarded a contract

or perform work as a subcontractor on a public works project for a period of not less than one year and no more than three years, except as specified.

Finally, AB 551 requires the Labor Commissioner to publish on its website a list of contractors who are ineligible to bid on or be awarded public works contracts, or to perform work as a subcontractor on a public works project. The Labor Commission also is required to notify the Contractors' State License Board when the list is updated as well as to notify awarding bodies of the availability of the list of debarred contractors annually.

AB 587: Volunteer Exemption

Under existing law, all workers employed on public works projects are required to be paid not less than the general prevailing rate of per diem wages for work. Existing law governing public works projects is not applicable to work performed by volunteers, volunteers coordinators, or members of the California Conservation Corps or community conservation corps. Currently, these provisions are effective only until January 1, 2012, the date of repeal. AB 587 extends the repeal date to January 1, 2017.

AB 766: Payroll Records

Existing law requires each contractor or subcontractor on a public works project to keep payroll records regarding his or her employees containing specified information required by the Division of Labor Standards Enforcement. However, existing law also requires that certain personal information be redacted when certified payroll records are made available for inspection to the public or a public agency.

AB 766 requires nonredacted copies of certified payroll records to be provided to any agency included in the Joint Enforcement Strike Force on the Underground Economy, or to any law enforcement agency, upon request. Redaction of an individual's name, address, and social security number would be required, however, when any copies of certified payroll records are made available for inspection and furnished upon request to the public by such agencies. Additionally, an employer is not liable in a civil action for any reasonable act or omission taken in good faith in compliance with the requirements of AB 766.

SB 136: Renewable Energy

Current law defines "public works" as, among other things, the construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. Moreover, current law requires that, except as specified, workers employed on public works projects are paid not less than the general prevailing rate of per diem wages and imposes misdemeanor penalties for a violation of this requirement.

SB 136 expands the definition of "public works" for the purposes of provisions relating to the prevailing rate of per diem wages, to encompass any construction, alteration, demolition, installation, or repair work done under private contract that satisfies the following conditions:

- (1) the work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements;
- (2) the work is performed on the property of the state or a political subdivision of the state; and
- (3) either of the following conditions exists: (a) more than 50 percent of the energy generated is purchased or will be purchased by the state or a political subdivision of the state; or (b) the energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a political subdivision of the state.

New Laws Regarding Hospitals

AB 1136: Patient Handling

AB 1136 amends the California Occupational Safety and Health Act of 1973 to require general acute care hospitals to maintain a safe patient handling policy and prohibit the discipline of any health care worker who out of concern for

safety refuses to lift, reposition, or transfer a patient. AB 1136 requires hospital employers to adopt an injury prevention plan to protect health care workers from back and musculoskeletal injuries. The plan also must address patient safety with a comprehensive “patient handling policy” component. The safe handling policy requires the replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices, or lift teams, as appropriate for a particular patient and consistent with the employer’s safety policies and the professional judgment and clinical assessment of the registered nurse.

Additionally, AB 1136 requires hospital employers to provide lift teams or other support staff trained in safe lifting techniques. A “lift team” includes hospital employees who are specifically trained to handle patient lifts, repositionings, and transfers using patient transfer, repositioning, or lifting devices as appropriate for the patient. Hospitals are not required to hire new staff to comprise the lift team, provided that direct patient care assignments are not compromised.

Furthermore, hospitals must provide training to health care workers, including lift team members or other staff responsible for assisting in lifting patients. The training shall include at least the following: (1) the appropriate use of lifting devices and equipment; (2) the five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation; and (3) the use of lifting devices to handle patients safely. The hospital coordinator of care must be a registered nurse responsible for the observation and direction of patient lifts and mobilization, and who will participate in patient handling in accordance with the nurse’s job description and professional judgment.

Finally, AB 1136 prohibits a hospital from disciplining a health care worker for refusal to lift, reposition, or transfer a patient due to concerns about the worker’s safety, the patient’s safety, or the lack of trained lift team personnel or equipment.

New Laws Regarding Public Employment Relations Board (PERB)

SB 609: PERB Appeals

SB 609 affects appeals of decisions of the Public Employment Relations Board regarding employee organizations (i.e., unions). Disputes about recognition of a union are submitted to an administrative law judge appointed by the PERB, and can be appealed by the aggrieved party to the full board. The new law states that if the board fails to act on the appeal within six months of its filing, the ALJ decision is deemed to be affirmed.

SB 857: Unlawful Strike Damages

Existing law establishes the Public Employment Relations Board (“PERB”), which has the power and duty to investigate unfair practice charges and to determine whether the charges are justified and the appropriate remedy. SB 857 specifies that in an action to recover damages due to an unlawful strike, PERB has no authority to award strike-preparation expenses as damages, or to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. SB 857 is not intended to modify existing law authorizing a court award of damages for otherwise unlawful conduct during a strike.

Miscellaneous Laws

AB 501: Bargaining Rights of Public School Employees

AB 501 will affect K-12 and community college districts by expanding the scope of employees who are afforded representational rights under the Educational Employee Relations Act (“EERA”). Under existing law, public school employees have the right to form, join, and participate in activities of employee organizations of their own choosing for the purpose of representation on matters of employer-employee relations. For purposes of negotiations on collective bargaining agreements covering public school employees, “public school employer” or “employer” is defined as the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or certain charter schools. Existing law authorizes public agencies to agree to join together as joint power agencies for specified purposes.

AB 501 expands the definition of “public school employer” or “employer” to include specified auxiliary organizations established by the California Community Colleges, and joint power agencies created as an entity separate from the parties to the joint power agreement with separate employees that meet certain additional criteria. As a result, community college auxiliary organizations and joint powers agencies are required to engage in collective bargaining with their separate employees.

Additionally, AB 501 expands the definition of “exclusive representative” from an employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees to an employee organization representative of all public school employees. A “public school employee” is defined as a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor, management employees, and confidential employees.

AB 646: Mediation and Fact Finding Requirements

The Meyers-Milias-Brown Act (“MMBA”) requires the governing body of a public agency to meet and confer in good faith as to wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. If the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and share the cost equally. Should the parties reach an impasse, MMBA provides that a public agency may unilaterally implement its last, best, and final offer.

AB 646 amends the MMBA to require fact finding after mediation and before a local public agency may unilaterally implement its last, best, and final offer. Under AB 646, if a mediator is unable to effect settlement between the parties within thirty days of his or her appointment, the employee organization may request that the parties’ differences be submitted to a three-person fact finding panel. The panel will consist of one representative selected by each party and a chairperson chosen by the Public Employment Relations Board (“PERB”). The parties may mutually agree on a different chairperson in lieu of the person selected by PERB within five days after PERB selects the initial chairperson. The costs for the services of the panel chairperson shall be split equally between the parties.

The fact finding panel is tasked with making written findings of fact and recommendations covering unresolved issues during negotiations. The panel is empowered to conduct investigations, hold hearings, and issue subpoenas requiring witness testimony and the production of evidence. In arriving at its findings and recommendations, the panel is required to consider and apply numerous factors detailed in AB 646, including without limitation: (a) the interests and welfare of the public; (b) the financial ability of the public agency; (c) wages, hours and conditions of employment of employees performing similar services for comparable public agencies; (d) the consumer price index for goods and services; and (e) the overall compensation presently received by employees.

If the impasse is not settled by the panel within thirty days after its appointment, the panel must submit any findings of fact and recommended terms of settlement to the parties. Within ten days after receipt, the public agency is required to make the panel’s findings and recommendations publicly available. A public agency is prohibited from implementing its last, best, and final offer until at least ten days after the panel’s written findings and recommendations have been submitted to the parties and the public agency has held a public hearing on the impasse. Charter cities and counties covered by binding arbitration are excluded from the fact finding requirements of AB 646.

AB 1028: Employment of CalPERS Retirees

AB 1028 codifies additional restrictions for retirees regarding their ability to work for public agencies. Existing law allows CalPERS retirees to be appointed for a limited duration to a position deemed as requiring specialized skills or during an emergency to prevent stoppage of public business. This new bill explicitly limits post-retirement employment to those circumstances.

Moreover, AB 1028 clarifies that the one-year limitation on post-retirement employment cannot be circumvented by simply reappointing the retiree to another one-year term. AB 1028 also limits the retiree's compensation to the maximum published pay schedule for the vacant position.

Finally, AB 1028 makes it explicit that the retiree must possess a specialized skill and also adds language indicating that the appointments are limited to vacant positions only while the agency is actively recruiting for a permanent appointment.

AB 1236: E-Verify

AB 1236 prohibits the state, city, or county, from requiring private employers to use E-Verify as a means of verifying that its employees are authorized to work in the United States. The exceptions are where E-Verify is required by federal law or as a condition of receiving federal funds. California employers may still use E-Verify voluntarily.

AB 1344: Local Agency Executive Contracts

AB 1344 regulates compensation of high level executive public servants by adding substantive limitations on employment contracts for executive public officials, as well as Brown Act meeting requirements and penalties for abuse of public office. The following are the key provisions of the bill, which apply to public agencies including school districts.

First, new contracts or renewed contracts are prohibited from containing an automatic increase in the level of compensation that exceeds a cost-of-living adjustment or a maximum cash settlement in excess of certain limits specified in the Government Code. AB 1344 defines compensation to include an annual salary or stipend; automobile and equipment allowances; incentives and bonus payments; and payment in excess of the “regular” benefits the district provides for all other employees.

Moreover, under AB 1344, a local agency governing board is prohibited from calling a special meeting to approve the contract or compensation of local agency executives, which includes chief executives, general managers, school superintendents, and other department heads that are not part of a collective bargaining unit. Thus, regularly scheduled meetings and following all of the Brown Act provisions are required for the meeting where a new contract or renewal is adopted for these types of employees.

Additionally, AB 1344 mandates that employment contracts entered into or renewed with local agency executives must include a provision indicating that 1) paid leave for the official pending an investigation, 2) funds for the criminal legal defense of the official, or 3) any cash settlement related to the official’s termination must be reimbursed by the official if the official is found guilty of a crime involving abuse of his or her position. If the local agency provides these types of payments absent a contractual obligation, such sums must be fully reimbursed by the official to the agency if the official is convicted of a crime involving abuse of his or her office or position.

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