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NEW LEGISLATION EXPANDS PROTECTIONS FOR WHISTLEBLOWERS

New legislation (SB 777) that went into effect January 1, 2004, broadens existing protections for whistleblowers, adds significant civil penalties for violators and imposes new posting requirements on employers. The law also establishes new evidentiary burdens for claims brought under the law.

Expanded Protections to Whistleblowers

Previously, California law prohibited employers from *retaliating against* employees who disclosed violations of state or federal *statutes and regulations* to government and law enforcement agencies. In addition, the law prohibited employers from making, adopting or enforcing any rule, regulation, or policy that prevented employees from making these disclosures.

The new law extends these protections to employees who disclose violations of state and federal *rules* and to employees who *refuse to participate* in an activity that would violate a state or federal statute, regulation or rule or would result in noncompliance with a state or federal regulation or rule. The new law also prohibits employers from retaliating against employees who engaged in whistleblowing activities *against a former employer*.

New Civil Penalties for Violations of the Act

Under the prior law, a violation of the act was punishable as a criminal misdemeanor. The new law retains these criminal penalties and imposes additional and significant civil penalties. Corporations and limited liability corporations may now be fined as much as \$10,000 for each violation of the above prohibitions.

New Posting Requirements for Employers

The law also imposes new posting requirements on employers. Employers are required to post a notice, in size 14 pica type (or larger), describing employees' rights and responsibilities under the new whistleblowing statute, including the telephone number (800-952-5225) of the new whistleblower hotline established by the State Attorney General's Office.

Evidentiary Burdens in Civil and Administrative Hearings

Finally, the law establishes new evidentiary burdens in civil lawsuits and administrative actions involving claims under this act, placing a heavy burden on employers to prove that the employer had legitimate reasons for taking an adverse action (such as a termination or suspension) against an employee.

What Should Employers Do?

Employers should carefully review their policies and procedures to insure that they have a clear anti-retaliation policy in place. They should also ensure that they are in compliance with the new posting requirements.

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