



**CPEhr**  
*Your Human Resources Partner*

# 2012 HUMAN RESOURCES UPDATES

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# Snapshot—New Employment Laws Effective in 2012

On October 9, 2011, California Governor Jerry Brown signed 22 new employment-related bills into law. Most were effective January 1, 2012. While a complete list is beyond the scope of this article, we highlight seven of the most important ones below. These laws directly impact employers in the state of California and we highly recommend you familiarize yourself with them, or contact CPEhr to assist you.

## **SB-459: Worker Misclassification Bill**

SB-459 is designed to crack down on the misclassification of employees as independent contractors. It also dramatically increases the penalties on employers who have been found to have willfully misclassified employees. The new law also extends to “non-lawyer advisers” who knowingly counseled employers to engage in the misclassification. (See complete article, *Correct Workers’ Classification—A Top Priority in 2012*, on following page.)

## **AB-887: The Gender Nondiscrimination Act**

This law amends California’s existing anti-discrimination laws as detailed in the Fair Employment and Housing Act. It defines both “gender identity” and “gender expression” as their own protected classes. The current law only uses the term “gender identity.”

The Equal Opportunity Employment Commission (EEOC) took in 99,947 charges of discrimination in 2011, the highest number of charges in its 46-year history.

## **AB-469: Notice of Pay Details**

Labor Code Section 2810.5 requires California employers to provide all non-exempt hires with a written notice that contains additional employment information. This information includes rate of pay, paydays, name of employer, including address and phone number, and workers’ compensation insurance information.

## **AB-22: Prohibition on Use of Credit Reports in Employment**

This new legislation prohibits employers from using an employee’s credit history in making most employment decisions. This also applies to applicants interviewing for a job. Prior to the passing of the law, employers were permitted to request a credit report for employment or business purposes. The new bill significantly limits the occasions for which an employer may use a credit report.

## **AB-592: Interference with California Family Rights Act Leave**

AB-592 makes it an unlawful employment practice for any employer to interfere with or otherwise prevent or attempt to prevent an employee from exercising rights under the California Family Rights Act. This existing law makes it an unlawful employment practice to deny an employee’s request for parental, pregnancy or medical leave as well as leave to care for an ill family member.

## **SB-757: Domestic Partner Discrimination in Health Insurance**

SB-757 is federal legislation that forbids employers from willfully excluding from coverage eligibility discriminating in coverage between spouses or domestic partners of a different sex and those in same-sex marriages or domestic partnerships. Group coverage must be provided to spouses and domestic partners in same-sex relationships on the same basis as provided to those in different sex relationships.

## **SB-299: Pregnancy Disability Leave**

This new law, effective January 1, 2012, requires all employers with 5 or more employees to continue paying the employer portion of health premiums for eligible female employees who take Pregnancy Disability Leave, up to 4 months in a 12-month period. The law specifically calls for benefits to be continued at the same level as if the employee had continued working during the leave period. The current law only requires pregnancy leave benefits be provided at the same level as they would for other temporary disability leaves.

## New IRS Voluntary Worker Reclassification Program

The Internal Revenue Service (IRS) recently announced a new initiative—the Voluntary Classification Settlement Program (VCSP)—through which employers can voluntarily report misclassified workers and convert them from independent contractors to employees. In exchange, employers can reduce their tax liability from the previous year for those workers to a flat 10 percent and be released from employment tax audits regarding that job classification for all prior years.

In brief, the new program states:

- The business pays 10% of the amount of employment taxes calculated under the rates of Internal Revenue Code (IRC) § 3509(a) for compensation paid for the most recently ended tax year to the workers being reclassified.
- The business has no liability for penalties and interest.
- The IRS will not audit the business for employment tax purposes for prior years with respect to the classification of those workers being reclassified.
- The business will extend the statute of limitations for assessment of employment taxes by three years for the first three calendar years after the date the business has agreed to the reclassification. Thus, the usual “three year” statute is extended to six years.

To be eligible, employers may reclassify workers under VCSP if they meet the following criteria:

- Consistently treated the workers as nonemployees;
- Filed all required Forms 1099 for the workers for the previous three years; and
- Are not currently under audit by the IRS for any reason or by the Department of Labor or a state agency, with respect to the workers’ classification.

However, a word of caution: businesses should carefully review all job descriptions before unnecessarily reclassifying workers as employees if there is a reasonable basis for an independent contractor classification. Additionally, even if an employer was audited by the IRS for worker classification issues, it might be able to avoid liability under an existing IRS program. Finally, the costs of processing tax withholdings and providing employee benefits can make reclassification an expensive proposition.

Businesses considering joining the VCSP should contact CPEhr or another competent employment expert to review all the benefits and risks of the program.

# Correct Workers' Classification— A Top Priority in 2012

As briefly outlined above, California Senate Bill 459, affectionately known as the “The Job Killer Act,” was signed into law by Governor Jerry Brown on October 9, 2011. The new law imposes severe penalties on employers who “willfully” misclassify workers as independent contractors. The penalties range between \$5,000 and \$15,000 per violation for first time offenders, and \$10,000 - \$25,000 if an employer is found to have engaged in a “pattern or practice” of willfully misclassifying its employees as independent contractors. (Just to compare to penalties for other California Labor Code violations, they typically range between \$50 and \$200 per count, with maximum caps of \$1,000 to \$4,000).

To add insult to injury, employers found to have violated the statute must prominently display a notice of its offense on its business website for one full year! Further, licensed contractors could face even greater punishment as the new law requires violations to be reported to the Contractors' State Licensing Board, which then must initiate disciplinary action against the contractor.

## Intensive Investigations

On the Federal level, the misclassification of workers has been a focus of attention by the Department of Labor. Labor Secretary Hilda Solis, recently stated, “The misclassification of employees as independent contractors is an alarming trend. The practice is a serious threat to both workers, who are entitled to good, safe jobs, and to employers who obey the law and are undercut when others use illegal practices.”

The Labor Department is now sharing information concerning businesses that misclassify workers with the IRS, as well as with a number of states that have agreed to work cooperatively with the Labor Department. As part of their efforts, the Labor Department has also hired approximately 300 investigators to explore wage theft grievances.

The IRS has already collected almost \$4 million of back wages in 2010, during the first of its three-year plan to audit some 6000 randomly selected, various sized companies. It is our understanding that eventual goal of the plan is to create an employment taxes scoring system.

## Be Proactive to Protect Your Company

Employers who misclassify employees as independent contractors may eventually find themselves paying significant penalties, in addition to employment taxes and various benefits for which the misclassified employee may be eligible such as pension, health insurance, worker compensation, vacation and sick benefits, unemployment and more. As such, it behooves all employers to be proactive in reviewing their employee job descriptions and reclassifying misclassified workers if necessary. A few tips:

1. Read through the Labor Department's rules and examine workers' job descriptions to determine whether classifications are correct.
2. Complaints should be investigated promptly. A worker claiming that they are entitled to a particular status or financial benefit should be heeded and employers should be sure to examine the case.

3. Review the IRS guidelines. The IRS provides clear eligibility parameters for determining independent contractor status. One must consider all information that helps determine the degree of control and independence maintained by the worker in relation to the company.

Here are some additional questions an employer may want to answer for each worker in question:

1. Does the company control how the worker performs their work?
2. How is the worker paid and who pays for expenses and supplies?
3. What type of relationship exists between the employer and worker?
4. Is there a written contract and are there employee benefits?
5. Is the work performed by the worker essential for the business?
6. Is the worker employed on a short- or long-term basis?

The answers to questions of this sort will guide employers in their determination of each worker's classification. The IRS created a concrete tool to assist employers with this task called the 20 Factor Test. Bear in mind that a worker does not require all 20 factors in order to be considered either an employee or an independent contractor.

In short, to prevent future aggravation and financial penalties, be proactive, investigate complaints promptly, carefully check each worker's status and reclassify as necessary. Alternatively, contact CPEhr who can assist you in all aspects of employee job descriptions and classifications.



# 2012 Tax and 401(k) Limits

Once again, various tax and payroll limits will be changing in 2012. Below is a summary of the important changes. Payroll/tax figures which remain the same in 2012 are noted as such.

## **FEDERAL**

### **FICA (Social Security)**

Maximum Taxable Earnings	\$110,100
Employer 2012 Withholding Percent	6.2%
Employer 2012 Maximum Withholding	\$6,826.20
	(\$4,485.20 in 2011 for EE)
	(\$6,621.60 in 2011 for ER)

### **FICA (Medicare)**

Maximum Taxable Earnings	No Limit
Employer/Employee 2012 Withholding Percentage	1.45%
Employer/Employee 2012 Maximum Withholding	No Limit
	(No change from 2011)

### **SUPPLEMENTAL WAGES**

Rate (flat rate withholding method)	25%
Over \$1 million	35%
	(No change from 2011)

### **WITHHOLDING**

The 2012 withholding tables have not been finalized, as Congress has not yet finalized their decision on whether to adjust the tax rates. Any changes in the withholding tables will be communicated once they have been announced.

### **401(k) PLAN DEFERRAL LIMITATIONS**

Elective Deferrals	\$17,000
	(\$500 increase from 2011)
401(k) Catch-Up Contribution Deferrals	\$5,500
	(No change from 2011)

### **HSA PLAN DEFERRAL LIMITATIONS**

Individual Maximum Contribution (Includes Employer Contribution)	\$3,100
	(up \$50 from 2011)
Family Maximum Contribution (Includes Employer Contribution)	\$6,250
	(up \$100 from 2011)
Catch Up Contributions (55+ years old)	\$1,000
	(No change from 2011)

## **CALIFORNIA ONLY**

### **SUPPLEMENTAL WAGE WITHHOLDINGS**

Bonuses & Earnings from Stock Options	10.23%
	(No change from 2011)
Other Supplemental Earnings	6.60%
	(No change from 2011)

### **DISABILITY INSURANCE (Employee Paid)**

Maximum 2012 Wages Subject to Withholding	\$95,585
	(up \$2,269 from 2011)
Employee 2012 Withholding Percentage	1.0%
	(down .2% from 2011)
Employee 2012 Maximum Deduction	\$955.85
	(down \$163.94 in 2011)



# Partnership for Success: Complimentary Training Webinars

The success of almost every business depends on the skillset of the teams, and the individuals that form those teams. The more successful businesses have specific concepts that define the PFS (Partnership for Success) and these concepts may be referred to as “culture,” “professional behavior,” “job knowledge,” “hard skills,” or “soft skills.” It is through Training and Development of these teams that the concepts are introduced, supported and routinely refreshed.

Opportunities for growth and development are consistently listed in the top 5 motivating factors by employees contributing to reduced turnover, fewer workplace accidents, greater team cooperation, a more powerful dedication and loyalty by employees and the development of a stronger, more robust business.

CPEhr offers complimentary monthly training webinars on a wide range of human resource topics. We encourage you to join us! (topics subject to change)

**January** – Health Care Reform Updates

**February** – 2012 Employment Law Updates

**March** – Steps for Legal Investigations

**April** – Social Media in the Workplace

**May** – Team Dynamics

**June** – Understanding Diversity at Work

**July** – Ergonomic Basics

**August** – Workers’ Compensation

**September** – Understanding HR Policies

**October** – Performance Appraisals

**November** – Recognizing and Preventing Workplace Violence

**December** – Payroll and Tax Updates

For more information or registration, visit [www.cpehr.com](http://www.cpehr.com).



The U.S. employee training market is expected to grow to \$132 billion in 2012, almost half of the entire global market (\$292 billion).

[Source: TrainingIndustry.com]

# Rising Workers Compensation Costs and What Employers Can Do to Prevent It

After years of stable workers' compensation insurance rates, California employers can expect to see a significant increase in their insurance premiums starting January 2012. On November 4, 2011, Insurance Commissioner Dave Jones approved an average increase of 37% to the pure premium rates and a claims cost benchmark of \$2.30 per \$100.

The claims cost benchmark reflects the expected average cost of claims based on total California payroll, i.e. total claims cost/total payroll. The advisory pure premium rate measures the cost of workers' compensation claims and the expenses to adjust those claims over the next policy year for workers' compensation insurance.

Twice a year the WCIRB advises the insurance commissioner on how costs are developing within the California's workers' compensation system and in turn, the commissioner advises insurance companies whether they should lower, raise or maintain their rates.

Explaining the rate increases, Commissioner Jones held a public hearing at the end of September stating that the WCIRB is restructuring how the state's pure premium rate is calculated. Additionally, most carriers are experiencing increasing expenses and reduced profits due to rising insurance claims costs and operating expenses. Industry data for 2010 shows the combined loss ratio at 128%. That means, for every dollar an insurance company collected in premiums, it spent \$1.28 in claims and expenses.



While the 2012 increases are viewed as bad news for employers, Jerry Azevedo, a spokesman for the Workers' Compensation Action Network, a group that represents the interests of employers, offered the following perspective:

"The [new] filing means rates are essentially where they need to be to cover the cost of claims, which has been increasing substantially in recent years. This is a methodology that we think adds transparency. This is the first rate decision or advisory rate published by the insurance commission under the new methodology established by the bureau and our organization believes the new methodology is good for employers because it adds transparency and it's clearer and more informative for employers to expect where rates should go heading into the next year."

## Protecting Your Business Against Rising Premiums

The best way to offset increase in premiums is to maintain a safe work environment, which will reduce the occurrence of workplace injuries, and ultimately lead to a reduction in the company's experience modification rate (Ex Mod). Employers with a favorable Ex Mod (less than 1.0) will gain the benefit of having their Ex Mod applied to base rates resulting in lower premiums, as well as being eligible for additional credits or discounts offered by the insurance carrier.

Below we offer four fundamentals practices that will directly impact your workplace safety:

### 1. Implement an Injury and Illness Prevention Program (IIPP)

Not only is an IIPP a necessity for regulatory compliance,\* but a well designed IIPP will also help to minimize injuries and related costs. An IIPP should address key items including responsibility for overseeing the safety program, communication with employees, employee compliance with the program, hazard (risk) assessment and correction, accident investigation, safety training and recordkeeping.

*\*All California employers are required by Cal/OSHA to have an Injury and Illness Prevention Program in place. Federal OSHA is currently considering a similar requirement.*

### 2. Make Safety Everyone's Job

While it is necessary to designate specific individuals to administer the IIPP, it is also important to emphasize the company-wide shared responsibility for safety. In order for an IIPP to be effective, everyone from top management to supervisors and employees must buy in to and support the program. Make sure that managers and supervisors are adequately trained regarding company safety policies so that they can help to enforce these policies with their employees. Involve employees in the safety program, encouraging them to make safety suggestions, assist with hazard identification surveys and job hazard analysis. This creates a sense of employee ownership of workplace safety issues. Also consider incorporating safety into performance evaluations and bonus programs.

### 3. Consider a Safety Incentive Program

When done right, an incentive program can be a valuable addition to the company's overall safety program. Be wary of programs that discourage injury reporting; instead, try implementing a program that uses positive reinforcement, rewarding employees for contributing to workplace safety by making safety suggestions, following safe work practices and assisting with hazard identification efforts.

### 4. Consider Outsourcing Safety Administration

Many organizations attempt to institute an effective, cost efficient Risk Management Program in an effort to reduce workplace injuries. These programs may be difficult to implement, often with unproductive and costly results. Consider contracting with a Human Resources Outsourcing firm that employs safety specialists to assist you in the creation and implementation of an effective safety plan. Contact CPEhr's Risk Management Department for more information.

# Two Approaches to Mitigate Rising Health Care Costs

As the Supreme Court prepares to rule on the constitutionality of the Health Care Reform Act, some employers are taking a “wait and see” approach to their 2012 corporate benefit plans. Confused by the pending legislation, employers are fearful of rising insurance costs and are hesitant to make any significant changes to their current plans. However, in contrast to this “status quo” attitude, other employers are taking proactive steps to mitigate future premium increases. Two methods that have been growing in popularity over the past several years are consumer directed health plans and employee wellness programs.



**Consumer Driven Plans.** Employers continue to explore consumer-directed health care plans (CDHC). These plans are structured to give employees greater control over their personal health care costs, thereby promoting caution before they utilize expensive procedures or request unnecessary treatments. CDHC plans offer higher deductible options, coupled with Health Savings Accounts (HSAs) or Health Reimbursement Accounts (HRAs) through which employees pay for out-of-pocket medical costs with their self-funded plans. According to recent reports, the consumer driven plans are working—CDHC patients were twice as likely as patients in traditional plans to ask about cost, three times as likely to choose a less expensive treatment option, and chronic patients were 20 percent more likely to follow treatment regimens carefully. [Source: “Consumer Driven Health Care,” *Networks Financial Institute Policy Brief*, Indiana State University]

**Employee Wellness.** As premiums continue to increase, employers are looking to promote employee wellness programs to offset these costs. Wellness programs can include educating employees to be more conscious health care consumers, promoting healthy lifestyle habits, offering incentives for weight-loss or exercise activity, or offering free or discounted memberships to gyms and health clubs. Alternatively, other employers would penalize employees for engaging in an unhealthy lifestyle. Wal-Mart, for example, recently imposed a \$2000 per year surcharge for some smokers. While this type of approach is somewhat controversial, it drives the message home that unhealthy lifestyle choices out of the office impact employers’ costs and overall efficiency in the office. Ultimately, a healthier workforce will reduce medical insurance costs and improve employee productivity.

While the future of healthcare remains clouded with doubt and uncertainty, employers have tools at their disposal to proactively address the certain increases in insurance costs. Please contact a CPEhr benefits specialist to assess if a CDHC plan makes sense for your company and to assist you in implementing an effective employee wellness program.

Nearly half (47%) of respondents in a recent survey said their organization offers, or plans to offer, domestic partner benefits to at least some employees.

[source: BLR’s Spousal and Domestic Partner Benefits Survey, 2011]



## About Us

CPEhr is one of the oldest privately held Human Resources Outsourcing and PEO firms in California. Our longevity, coupled with the flexibility afforded to a privately held corporation, enables CPEhr to provide customized services, with the back-end support of a large corporation.

We are proud of our customer service and personalized client relationships. We service a full range of industries and client sizes from 2 to 20,000 employees. With a 90 percent retention rate, our corporate staff is dedicated to our company and clients. CPEhr has a flat hierarchy making our executive team always available to you.

Services include:

- HR Compliance
- Employment Administration
- Employee Benefits
- Risk Management
- Payroll and Tax
- Training
- Recruiting

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