

California's New Anti-Retaliation Protections for Foreign Workers Effective January 2014

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In October 2013, California enacted several new laws that provide California workers, who are seeking to change their personal information, engage in whistleblower activity, or exercise their workplace rights, with expanded protections against adverse employment actions, including specific protections for foreign national employees. The new legislation became effective on January 1, 2014. Some of the relevant provisions are summarized below.

- Employers may no longer discharge, discriminate, retaliate, or take any adverse action against an employee for updating or attempting to update personal information (including, for example, providing a new Social Security number), unless the changes relate to skills, qualifications, or knowledge required for the job. [Assembly Bill (AB) 263]
- Employers are prohibited from taking adverse action against employees who attempt to exercise a right under California's labor laws. [AB 263 and Senate Bill (SB) 666]
 - A court may order the suspension of an employer's business license if it is found to have engaged in an "unfair immigration-related practice" in retaliation for the exercise of a workplace right. Protected rights include complaining about unpaid wages, informing another person about workplace rights, or seeking information to determine if an employer is in compliance with workplace laws. An "unfair immigration-related practice" is defined to include:
 - requesting more or different documents than those required under federal I-9 rules during the Form I-9 employment verification process;
 - refusing to honor documents that, on their face, appear to be genuine;
 - using the federal E-Verify system to check work eligibility in a manner not required or authorized under the program;
 - threatening to file or filing a false police report; and
 - threatening to contact or contacting immigration authorities.

Conduct undertaken at the direction or request of the federal government is excluded from the definition. [AB 263]

- Employers that report or threaten to report to a government agency the suspected citizenship or immigration status of an employee, a former employee, or a prospective employee, or that of a family member, in retaliation for the employee's exercise of a right under state or local labor laws, are penalized. Under the law, the employer is deemed to have taken

an unlawful adverse action against the individual for purposes of establishing a violation of the individual's legal rights. Penalties for violations of this provision include the suspension or revocation of an employer's business license. [SB 666]

While the above laws presumably are aimed at eliminating unfair immigration-related employment practices, the reality is that these bills could impact the ability to discharge an employee who presented false documents/information in the I-9 process. Employers are strongly advised to consult with experienced legal counsel before taking any adverse employment action in such a circumstance.

In light of these recent legislative enactments, it is critical that employers review and update their policies, procedures, and training. Ogletree Deakins has in-depth experience counseling clients in this regard and can assist you in avoiding the serious consequences of non-compliance. Our recent blog post, "[How the New California Laws Will Impact Your Business in 2014 and Beyond, Part 3: California Immigration Related Legislation](#)," covers these and other new California immigration-related legislation in detail.

Note: This article was published in the [December 2013 - January 2014 issue](#) of the *Immigration eAuthority*.

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