



New Laws for 2023

By Erin K. Tenner, Esq.

WARN ACT NOTICES: WARN Act notices are required upon sale or closure of most auto dealerships in California under the federal or state WARN Act. Effective January 1, 2023, the CA Labor Commissioner will have authority to examine the books and records of a business to determine whether WARN Act Notice compliance requirements have been met. Failure to comply can result in large penalties.

VEHICLE PARTS AND ACCESSORIES THEFT: Relief from the relentless barrage of thefts, for those of you who have had to deal with them, is on the way. Penal Code Section 13899 effective January 1, 2023, establishes a regional task force to work with law enforcement in areas of high property crime rates specifically including, but not limited to, organized retail theft, vehicle burglary, and theft of vehicle parts and accessories.

PAY SCALE DISCLOSURE REQUIREMENTS: Existing federal law requires employers with 100 or more employees to file an EEO-1 annually in specified job categories, including the number of employees by race, ethnicity, and sex. Employers with multiple establishments must file a report for each location and a consolidated report that includes all employees. A new state law requires businesses with 100 or more employees to file a pay data report in addition to filing the federal EEO-1 and will not accept the EEO-1 as compliance. It does not require the filing of a consolidated report with the state. Under the new law this report must be filed directly with the CA Civil Rights Department of the Business, Consumer Services and Housing Agency on or before the second Wednesday of May 2023 and annually thereafter and must include employees hired through labor contractors. “Pay scale” means salary or hourly wage range for certain categories of employees. Specific information about individual employees must not be provided due to privacy law protections. The new bill requires mean and median hourly rate information for each category race, ethnicity and sex, within each pay category. Civil penalties, not to exceed \$100 per employee for a first violation and \$200 per employee for a second violation, can be imposed for failure to comply. In case it reminds you of PAGA, enforcement will not be through private attorneys, but rather through the Labor Commissioner. However, civil actions for injunctive and other relief as determined by a court can be filed. If the employer fails to keep records, there is a rebuttable presumption against the employer that they violated the law.

In addition, any employer with 15 or more employees must include pay scale in any job posting. The records of the posting must be maintained for the duration of the employee’s employment and for three years thereafter. The records must be open to inspection by the Labor Commissioner. If

a third party is used to post the job, the third party must be provided the pay scale to post. This implies that even if you post the job yourself, on your website for example, you must include the pay scale. Pay scale for this purpose means salary or hourly wage that the employer reasonably expects to pay for the position. Nothing in this new law prohibits an employer from asking an applicant their expectations for pay. If an applicant volunteers their current pay, nothing in the new law prohibits the employer from considering the current pay in deciding how much to offer the applicant. Applicant, for purposes of this new law, does not include any current employee of the employer. This implies that if postings are internal only, no pay scale posting is required. However, pay scale must be provided to any employee who requests it. Labor Code Section 433, which makes violations a misdemeanor, does not apply to this new section.

FRANCHISE LAWS: There has been a long-standing debate in California about whether an auto dealership is a franchise or not. To be a franchise, a franchise fee must be paid under California law. Because no “fee” is charged by the factory, the factory will argue they are not issuing franchises. The argument rests on whether charges for products auto dealers are required to purchase from manufacturers include extra charges that could be called a franchise fee, over and above the reasonable charge for the product. When manufacturers sell their parts and accessories, for example, to non-dealer retailers for less than what they charge dealers, which GM has been known to do, it bolsters the argument that an auto dealership is a franchise. The CA Vehicle Code has been stronger than California franchise laws for years, so dealers will rarely argue that they have been issued a franchise, and the issue became even less relevant this year as the franchise laws in California were amended (AB 676 signed into law September 29, 2022) to include many of the protections provided to auto dealers under the California Vehicle Code. This has the end result of also strengthening Vehicle Code protections for dealers by making them more difficult to change.

BEREAVEMENT LEAVE: Auto dealers may not deny an employee not covered by a union contract, who has worked for the dealership for 30 days prior to the commencement of the leave, a request for up to 5 days of bereavement leave. The leave may be taken consecutively or non-consecutively within three months of the death of a family member. Leave may be pursuant to the existing bereavement leave policy of the employer as long as it complies the law. If the employer has no bereavement leave policy to the contrary, the bereavement leave may be uncompensated. “Family member” means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. An employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee. The employer is required to keep the reason for the leave confidential.

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