THE GOLDSTEIN LAW FIRM, A.P.C.
Established 1977

ATTORNEYS AT LAW

LABOR & EMPLOYMENT LAW NEWSLETTER

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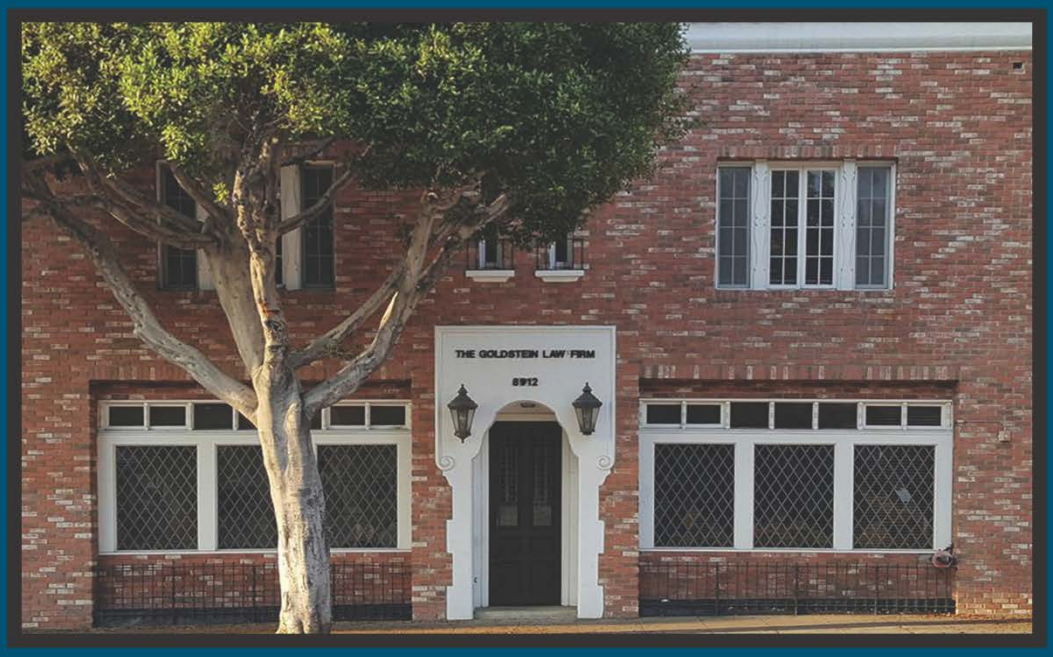
MARCH-APRIL 2018



Representing Employers Since 1977

"An ounce of prevention is worth a pound of cure"

"PLANNING TO SUCCEED IN CALIFORNIA'S 2018 CHALLENGING LABOR, EMPLOYMENT AND WAGE AND HOUR LEGAL ENVIRONMENT -REQUIRES ADVICE AND COUNSEL OF KNOWLEDGEABLE, DEDICATED PROFESSIONALS." - THE GOLDSTEIN LAW FIRM

I. California's AB 450, What Employers Must Know To Comply Without Running Afoul of Federal Immigration Laws and ICE Enforcement

In a recent email statement, California Department of Industrial Relations Communications Director Erika Monterozza said that "The Labor Commissioner's Office will investigate complaints of employers who allow federal immigration authorities access to non-public areas of workplaces without a judicial warrant, or who fail to notify employees of a Notice of Inspection received from immigration authorities." Regardless of your personal opinions about whether California's sanctuary state laws are pre-empted by federal law, The Goldstein Law Firm recommends that employer full comply with AB 450 until the Courts determine the validity of the law.

A. What Are the Basic Provisions of AB 450?

1. Under the new law every public and private employer in California, or any person acting on the employer's behalf must refrain from waiving Fourth Amendment to the U.S. Constitution protections against unreasonable searches and seizures by (a) granting voluntary consent to enter any non-public areas at a place of labor, except if presented with " a judicial warrant" issued by a Judge and not merely an administrative warrant issued by ICE; (b) granting voluntary consent to an immigration enforcement agent to access review or obtain the employer's employee records with " a subpoena or judicial warrant, " except if the immigration agency (most often, this would be Homeland Security Investigations (HIS), an agency of the U.S. Immigration & Customers Enforcement) issues a Notice of Inspection (NOI) of Employment Eligibility Verification Form I-9s and other records required to be maintained under federal immigration regulations in order to verify employment eligibility.
2. Posted Notice of Worksite Inspection. Employers are required to post a notice at the worksite in the language the employee normally uses to communicate employment related information to employees, within 72 hours of receiving an NOI, a Notice of Inspection (a copy of which must also be posted at the same time) that an immigration agency, identified by name has issued a NOI and will conduct inspections of I-9 forms or other employment records. The Notice should also state the date that the employer received the NOI and the nature of the inspection to the extent known.
3. Give notice to any labor organization that represents the employees within 72 hours of the immigration agency's issuance of the NOI.
4. Within 72 hours of the employer's receipt of a written immigration agency notice informing the employer of the agency's inspection of the I-9s and the employer's employment records, typically entitled a "Notice of Suspect Documents (NSD), provide a written notice to affected employees who apparently lack work eligibility

(any, I applicable the employee's union representative) of the obligation of ther employer and affected employees, containing the following information:

(a) A description of any and all deficiencies or items identified in the written immigration inspection results notice related to the affected employee.]

(b) The time period for correcting any potential deficiencies or items identified in the written immigration inspection results notice related to the affected employees.

(c) The time and date of any meeting with the employer to correct any identified deficiencies.'

(d) Notice that the employee has the right to representation during any meeting scheduled with the employer.

5. Employers are to refrain from re-verifying the employment eligibility of a current employee at a time or in a manner not required by the employment eligibility provisions of the Immigration Reform and Control Act of 1986, or that would violate any E-Verify Memorandum of Understanding the employer has entered into with the Department of Homeland Security.
6. The Penalties for California Employers Who Violate AB 450
    1. Imposition of penalties of from $2,000 to $10,000 per violation.

B. <u>How Employers Should Deal with Immigration Issues and Comply with California's AB 450.</u>

1. Only allow ICE agents to enter public areas of your business and not areas of your business that are not open to the public under the ICE agent has a judicial warrant signed by a Judge.
2. Fully cooperate with ICE agents by providing the agents with all required documentation of your employee's right to work in the U.S.
3. If you receive a notice that Ice will be visiting your place of business to check I-9 documents, provide a written notice of ICE's visit and the purpose of the visit to all employees in English and in the language that is predominate your employees.
4. Designate a manager to deal with all ICE related issues.
5. You may wish to have the file with I-9 forms for your employees separated from the employees' personnel files.
6. Train the contact person with ICE to document ICE's actions, such as asking the names of the agents; the number of agents, whether or not the agents carried weapons; the agents badge numbers; questions asked and any statements made by the ICE agents; any property takes/searched or persons questions; names of other witnesses who observed the raid; name and circumstance of any person detained; and any use by ICE agents of force or intimidation.

7, Contact The Goldstein Law Firm if you have any questions about the implementation of AB 450 or your company is experiencing an ICE raid or has received a Notice of Inspection from ICE.

II. Federal Judge Magistrate in Sand Francisco Decides that Person Who Delivered Meals for GrubHub, a Part of the Gig Economy Was an Independent Contractor and not an Employee

In a rare decision

III. <u>Twelve (12) Tips For Dealing With the Government Code Section 12952- No Asking Job Applicants on Your Employment Application About Their Criminal Record-</u>

1. To avoid liability for negligent hiring or retention, you must ask a job applicant who has been given a firm, but conditional job offer of employment and met the minimum qualifications for the job, whether they have been convicted of a crime and the circumstances of the convictions, including any sentence they received.
2. All conditional job offers should be in writing and clearly state that as a condition of receiving a final offer the prospective employee is required to disclose his or her criminal history that will be verified in a criminal background check.
3. Once you make a firm written offer of employment based on a job applicant's qualifications as set forth in the applicants written employment application and resume, you should request the applicant in a properly drafted written form whether the applicant has been convicted of a crime and other relevant information regarding the crime or crimes the applicant was convicted of, including any sentence that the applicant received for the crime.

4. Any job offer given to a job applicant should be conditioned on the applicant truthfully completing the written form asking whether the applicant has been convicted of a crime and other relevant information regarding the crime or crimes the applicant was convicted of, including any sentence that the applicant received for the crime.
5. To avoid liability for negligent hiring or retention you should condition the job offer on the applicant passing a background check to verify the statement made in the application process and a substance abuse screen as part of a physical examination related to the job the applicant has applied for.
6. You should seek to independently verify the information provided by the applicant about his or her criminal record or absence of such a record.
7. If you use a third-party screening firm (consumer reporting agency) to obtain background information on applicants or existing employees, you must follow the requirements of the federal Fair Credit Reporting Act ("FCRA"), including the FCRA's provisions requiring advance consent for a background check and providing appropriate notices when any adverse employment decision is based, in whole or in part, on the information disclosed in a background report.
8. Your decision to hire a person with a criminal record should be based on an assessment of the qualification of the individual job applicant's qualifications.
9. Your decision should be based on the following: (1) on the nature of the crime they committed, violent or non-violent; (2) the nature of the sentence imposed for the crime; (3) whether the crime was a single offense or for multiple offenses; (4) how long ago they were convicted of the crime or crimes and if they completed their sentence; (5) what they have done to rehabilitate themselves; and (6) whether in fact they are more qualified for the position then other applicants for the same position.
10. You have a duty under the new law to communicate your decision to the applicant in writing. The notice may, but is not required to, justify or explain the reason for your action.
11. Employers , except for law enforcement agencies, that exclude hiring job applicants because they have been convicted of a crime or crimes can be subject to charges of discrimination by private individuals under the California Fair Employment and Housing laws, and for Title VII violations by the U. S. Equal Employment Opportunity Commission. This is because the impact of such a policy of automatic exclusion of persons with a criminal record disparately falls on job candidates who are members of minorities who are more likely to have jail or prison records.

12. **If you have any questions about how to deal with the hiring of job applicants who have a criminal record, contact The Goldstein Law Firm for advice and counsel.**

IV. Sexual Harassment Claims Will Be a Hot Topic of Discussion and Perhaps Litigations in 2018

It seems that each week a new public personality in government or corporatelife is being taken down by allegations of sexual harassment and sexual assault. Many of the claims are for illicit sexual conduct that may have taken place years and even decades ago. Some are of more recent vintage. If major entertainment and business figures can be taken down and have their careers destroyed, rightly or wrongly by mere allegations of engaging in sexually harassing conduct, how should employers handle claims of sexual misconduct in their workplace**. Make certain that you have your sexual harassment anti-bullying training performed by the experienced and knowledgeable professionals of The Goldstein Law Firm in 2018.**

V. <u>Late Developments- The National Labor Relations Board Voids Obama Era Rule Making Parent and Subsidiary Companies Jointly Liable for Labor Law Violations.</u>

There should be no surprise in the business or labor community that elections have consequences especially at the U.S. National Labor Relations Board where the new Trump majority overturned an Obama-era rule making parent companies jointly liable with subsidiaries for unfair labor practices, when the parent company merely had the ability to exercise control over its subsidiary. This decision was directed mainly at franchisors, such as McDonalds that was made jointly liable with its thousands of franchisees. The Democratic controlled NLRB ignored 60 years of precedent to reach its result and to try to assist unions that have been steadily losing membership for many years to unionize fast food workers.

The new Republican majority reversed the Obama- era *Browning-Ferris Industries Co*. landmark decision and in *Hy-Brand Industrial Contractors Ltd. National Labor Relations Board decision 365 NLRB No. 156* held, returning to 60 years of former NLRB and court precedent that the parent and the subsidiary bear joint liability when the parent exercises control over the subsidiary, as opposed to merely having the option to exert its power. This decision will certainly affect fast food and restaurant chains and companies that use staffing agencies.

If you have any questions about how the *Hy-Brand Industrial Contractors Ltd. National Labor Relations Board decision* will affects your company, contact the Goldstein Law Firm.

THE GOLDSTEIN LAW FIRM PRACTICE AREAS

Employment Law, Wage and Hour Law, Labor Law, Class Actions, Business Litigation, Contract Disputes, Arbitrations, Corporate and Transactional Law, Shareholder Disputes, Commercial Law, Appellate Law, Corporate Investigations, Wrongful Death, Training & Workshops

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