



October 24, 2002

New Rules on Background Checks

Responding to protests from California employers following last year's amendments to the Investigative Consumer Reporting Agencies Act ("ICRA"), the California legislature has made more changes, effective immediately. The new rules clarify that an employer **need not obtain consent for or give notice of investigations based on suspected wrongdoing or misconduct.**

In all other circumstances, employers must obtain *written consent* from current or prospective employees before requesting investigative consumer reports from a consumer reporting agency ("CRA"). Prior to requesting a report, an employer must disclose the following information to the consumer:

- That an investigative consumer report may be obtained;
- The permissible purpose for obtaining the report;
- That the disclosure may include information about the consumer's character, general reputation, personal characteristics, and mode of living;
- The name, address, and telephone number of the agency conducting the investigation;
- The nature and scope of the investigation; and,
- A summary of the consumer's right to view the information obtained.

The disclosure/consent form *cannot* be part of another document, such as an employment application or employee handbook. The consumer must be given the opportunity to indicate his or her desire to obtain a copy of any report that is prepared. Employers can delegate the responsibility for providing copies to the CRA.

In-house investigations (**other than those based on suspected wrongdoing or misconduct**) are also covered by the new rules. If information collected by in-house personnel on a current or prospective employee is a matter of public record, you must provide the individual with a copy of the information obtained within seven days of receipt, unless the individual expressly waives his or her right to receive it. If any adverse action is taken against the individual, a copy must be provided regardless of waiver.

California Adopts "WARN" Act

On September 21, 2002, Governor Davis signed Assembly Bill 2957 into law. Similar to the federal Worker Adjustment and Retraining Notification Act ("WARN"), the new California law requires "industrial or commercial facilities" employing 75 or more people within the preceding 12 months to provide 60 days' notice to affected employees and specified government agencies of mass layoffs, relocations, or terminations. The law goes into effect January 1, 2003.

The law defines a "mass layoff" as 50 or more employees during any 30-day period. A "relocation" is defined as the "removal of all or substantially all ... operations ... to a different location 100 miles or more away." A "termination" is defined as a "cessation or substantial cessation of industrial or commercial operations."

Unlike the federal WARN Act, the California law does not make an exception for layoffs involving less than 33% of the employees at a site. It also does not define "relocation" or "termination" based on the number of employees involved, which means there may be times when California's notice requirements apply, but the federal Act does not.

Notices required by the California law must contain the same information as those required under the federal WARN Act. Unlike the federal Act, however, California's notice must be provided directly to each affected employee, rather than a designated union representative. Failure to provide the required notice may result in penalties, including back pay and benefits for each affected employee for up to 60 days. There are a number of exceptions to the notice requirements, and you should contact your employment attorneys to find out if any apply to your business.