

# **New Year, New Laws for California Employers – Added Whistle-blower Protections, With Whom Will the EDD Share Employer Reports and Contracts with Commission Employees**

Article By:

Mark E. Terman

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Continuing with our series “New Year, New Laws for California Employers,” we take a look at newly added whistle-blower protections, with whom the EDD will share employer reports and contracts with commission employees. Prepared by [Mark Terman](#), partner in the Los Angeles office, this series looks at some of the significant new regulations becoming law in 2013 affecting private employers doing business in California.

## **Added Whistle-blower Protections**

The California False Claims Act prohibits submission to the government of a false claim for money, property or services, and authorizes actions for treble damages and penalties. An example could be charging a government entity for goods or services that were not provided.

Employees, as “relators,” can inform the government or law enforcement, participate in these actions after satisfying certain requirements and share in the recovery. Employers cannot prevent employees from disclosing information to the government or law enforcement agency, or from acting in furtherance of a false claims action. There are similar statutes under federal law.

AB 2492 provides that contractors and agents can also be whistle-blowers under Cal-FCA. The new law also makes clear that retaliation for trying to prevent a false claim is prohibited, and that relief in a whistleblower or “Qui Tam” action can include reinstatement, double back-pay, interest on the back pay, special damages, punitive damages and attorneys’ fees.

## **With Whom Will the EDD Share Employer Reports?**

Existing law requires employers to provide employee wage information, new employee information and new independent contractor information to the Employment Development Department for use in the administration of tax and unemployment insurance.

We are entering an era of enhanced information sharing designed to make government agencies

more effective in enforcing tax and other laws, including billions of dollars that state agencies believe are lost in tax revenue due to improper classification of independent contractors. AB 1794 now permits the EDD to share employer and employee information with the Joint Enforcement Strike Force on the Underground Economy for the purposes of auditing, investigating and prosecuting violations of tax and cash-pay reporting laws and other agencies.

The strike force includes the EDD; Department of Industrial Relations, Division of Labor Standards Enforcement and Division of Occupational Safety and Health; Contractors' State License Board; Department of Insurance, State Compensation Insurance Fund; and Department of Justice (see [www.edd.ca.gov/payroll\\_taxes](http://www.edd.ca.gov/payroll_taxes)). Information sharing is also permitted with the California Department of Health Care Services, the California Health Benefit Exchange, the Managed Risk Medical Insurance Board, county departments and agencies, the Agricultural Labor Relations Board, the Franchise Tax Board and the State Board of Equalization.

## **Contracts with Commission Employees**

Enacted in 2011, Labor Code Sec. 2751 becomes effective Jan. 1, 2013. It requires an employer, when entering into a contract of employment calling for commissions as a method of payment, to create a contract that must be in writing and that describes the method of computation and payment of commissions. The employer must give a signed copy of the contract to the employee and obtain a signed receipt for the contract from the employee. If the contract expires and the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

“Commissions” generally mean the same as in Labor Code Sec. 204.1: “Compensation paid to any person for services rendered in the sale of such employer’s property or services and based proportionately upon the amount or value thereof.”

Commissions do not include: short-term productivity bonuses (such as are paid to retail clerks) and bonus and profit-sharing plans— unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed. AB 2675 adds that temporary, variable incentive payments that increase commissions but do not decrease payment are not covered.

Read the rest of the series:

[New Year, New Laws for California Employers - Employer Access to Social Media](#)

[New Year, New Laws for California Employers - Religious Dress and Grooming Protected and Breastfeeding Further Protected](#)

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