

The 12 Days of California Labor & Employment Series – Day 4: Notice Required to Employees Regarding Flexible Spending Accounts

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It's the end of the year and while everyone is busy, employers in California should be aware of new laws and regulations that go into effect on January 1, 2020. In the spirit of the season, we are using the "12 days of the holidays" to blog daily about one of these new California laws and its impact on California employers. On the fourth day of the holidays, my labor and employment attorney gave to me: four calling birds and AB 1554.

AB 1554 involves flexible spending accounts. As of January 1, 2020, employers will be required to notify employees who participate in flexible spending accounts of any deadline to withdraw funds before the plan year's end in two different forms. The options include notifying employees in-person, or through electronic communication, text message, phone call, or regular mail. The law is unclear whether the two notices can be done the same way—i.e. two text messages—or if they must be completed in two different manners.

What does this mean for employers? As noted above, employers are required to give these notices. In order to ensure compliance, they should plan ahead for their two means of communication and schedule these notices accordingly. Interestingly, the law does not state when these notices should be given. Generally speaking, flexible spending accounts are a "use it or lose it" benefit that terminates at year end. As such, this law seems more relevant for any plans that have a non-end of the year end date.



Overall, this new law is vague and will lead to compliance questions and most likely will require further clarifications. Employers should evaluate their business to determine their best times for the notice and schedule

it accordingly. It would be recommended for employers to have two different times scheduled to provide the two required notices—perhaps one mid-year and one at the beginning of the last quarter.

As of now, there does not seem to be any consequence for non-compliance.

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