

## NEW CALIFORNIA EMPLOYMENT LEGISLATION, AND ISSUES FOR 2006

### WAGE AND HOUR

#### 1. **CLARIFICATIONS TO COMPUTER PROFESSIONAL EXEMPTION (AB 1093)**

Computer software employees are exempt from California's overtime requirements if their rate of pay is at least \$47.81 per hour or the annualized full-time salary equivalent of that rate, provided all other requirements for the exemption are met. (See Labor Code § 515.5).

*(Caution: \$47.81 is the 2006 rate, which will change each year in relation to the California Consumer Price Index. Using the 2006 rate, the annualized full-time salary equivalent would be \$99,444.80).*

#### 2. **DIRECT DEPOSIT OF FINAL WAGES IS NOW OK (AB 1093)**

An employer can pay an employee's final wages by direct deposit into the employee's previously authorized bank account. Existing law relating to payment of wages upon termination of the employment relationship still applies.

#### 3. **PAYROLL DATA PRINTOUTS SATISFY RECORDKEEPING REQUIREMENTS (SB 759)**

Contractors and subcontractors can use computer printouts of payroll data to satisfy recordkeeping requirements regarding payroll records.

#### 4. **MEAL PERIODS IN THE MOTION PICTURE/BROADCASTING INDUSTRY (AB 1734)**

Employees in the motion picture and broadcasting industries are now exempt from state meal period requirements, as long as the employees are covered by a valid collective bargaining agreement that provides for meal periods and includes a monetary remedy if the employees do not receive a meal period.

#### 5. **PROPOSED MEAL PERIOD REGULATIONS NOT YET APPROVED OR REJECTED**

The California Division of Labor Standards Enforcement (DLSE) published proposed regulations regarding meal periods and enforcement of California laws regarding timing of meal periods. Copies of the proposed Regulations are available on the DLSE website: <http://www.dir.ca.gov/dlse>. They are also available on the Recent News and Updates and Wage and Hour pages of HRLaw.com.

## HARASSMENT/DISCRIMINATION

**6. STATUTE OF LIMITATION EXTENDED FOR MINORS' FEHA CLAIMS (AB 1669)**

The statute of limitation to file an administrative complaint with the Department of Fair Employment and Housing for violation of California's Fair Employment and Housing Act is extended for employees who are under the age of 18 when a violation is committed. For such employees, a complaint can be filed up to one year after the employee's 18<sup>th</sup> birthday.

**7. STATUTE OF LIMITATIONS EXTENDED FOR HATE CRIMES CLAIMS (AB 378)**

The statute of limitations for bringing a civil lawsuit based on a hate crime is extended from 1 year to 3 years. Hate crimes are crimes of violence, or intimidation by threat of violence, committed against a person because of his/her race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, position in a labor dispute, or because of a perception that the person has any of those characteristics.

**8. UNRUH ACT NOW PROTECTS MARITAL STATUS & SEXUAL ORIENTATION (AB 1400)**

Marital status and sexual orientation have been added to the list of classifications protected against discrimination by business establishments under the Unruh Civil Right Act.

**9. PUBLIC EMPLOYEES' RETIREMENT RIGHTS FOR DOMESTIC PARTNERS (SB 973)**

This law amends various sections of the Public Employees' Retirement Law and the Teachers' Retirement Law to require that a registered domestic partner of a member be treated the same as a spouse.

**10. EQUAL OPPORTUNITY FOR STATE AGENCIES/DEPARTMENTS (AB 124)**

This law is an amendment to the State Civil Service Act, which requires state agencies to establish their own equal opportunity programs to eliminate discriminatory preferences in state employment. These programs will replace current affirmative action programs. The bill also clarifies that state departments and agencies must collect statistical employment data and identify, report, and analyze under-use of racial, gender, and ethnic groups to ensure the under-use of any group is not due to discrimination.

**11. PROPOSED SEXUAL HARASSMENT PREVENTION TRAINING REGULATIONS**

On December 16, 2005, the California Fair Employment and Housing Commission (FEHC) released its proposed regulations regarding California's sexual harassment training and education laws covering employers in California. Those regulations are available for public comment, and may be approved by July 1, 2006. Copies of the proposed Regulations are available on the FEHC's website: <http://www.fehc.ca.gov>. They are also available on the Recent News and Updates and Harassment pages of HRLaw.com.

## EMPLOYEE LEAVE

### **12. STATE EMPLOYEES CAN DONATE LEAVE FOR CATASTROPHES (AB 747)**

Existing law allows “excluded” state employees (managerial, confidential, and supervisory employees) to transfer their unused leave, vacation, and holiday time to another excluded employee or a “rank and file” employee (an employee represented on matters pertaining to wages and conditions of employment) who has exhausted his/her paid time off when a catastrophic illness or injury occurs to the recipient employee or his/her family. This new law allows excluded employees to receive such leave credits from rank and file employees as well.

### **13. MILITARY LEAVE FOR STATE EMPLOYEES (AB 1523)**

Military leave must be granted to state employees who are called to active duty for the period specified in the orders, not to exceed 5 years for a permanent, probationary, or exempt employee, or for the remainder of a limited-term employee’s appointment.

## PRIVACY

### **14. SOCIAL SECURITY NUMBER LIMITATIONS ON PAYROLL STATEMENTS (SB 101)**

By January 1, 2008, all employers are required to include no more than the last 4 digits of an employee’s social security number, or an employee identification number that is not a social security number, on itemized paychecks.

## HEALTH AND SAFETY

### **15. NOTICE OF RESTRAINING ORDER FOR WORKPLACE VIOLENCE (AB 429)**

The Workplace Violence Safety Act currently provides a way for employers to seek a restraining order against anyone who poses a threat of violence to the workplace. This new law requires law enforcement officers who respond to a scene of reported violence or credible threat of violence to provide the assailant with verbal notice of the restraining order, which will suffice as legal notice. Once the officer provides verbal notice, the employer is only required to mail a copy of the restraining order to the assailant within 1 day, instead of having to personally serve the assailant with the order, as was previously required.

### **16. UV RADIATION/CANCER PREVENTION FOR OUTDOOR WORKERS (SCR 25)**

This law requires employers to ensure that their illness and injury prevention programs, and other systems for identifying and correcting workplace hazards, consider the effects of ultraviolet radiation and ensure that skin cancer prevention policies are enacted for outdoor workers.

### **17. DRUG/ALCOHOL TESTING FOR SCHOOL TRANSPORTATION VEHICLES (AB 1052)**

This law requires school districts and county offices of education that employ “school transportation vehicle” drivers, to participate in a program consistent with the federal regulations that apply to school bus drivers relating to the testing and use of substances and alcohol. “School transportation vehicle” is defined as a vehicle that is not a school bus, school pupil activity bus, or youth bus, and is used for the primary purpose of transporting children.

## **SIGNIFICANT VETOES AND BILLS REJECTED IN COMMITTEE**

### **WORKPLACE FLEXIBILITY LEGISLATION - FAILED TO GET OUT OF COMMITTEE**

AB 640 would have allowed individual employees, with written approval of their employer, to choose to work up to 10 hours per day in a 40-hour workweek without overtime pay.

### **MINIMUM WAGE INCREASE - VETOED**

AB 48 would have increased the minimum wage to \$7.25 per hour on July 1, 2006, and to \$7.75 per hour on July 1, 2007. It also would have provided an automatic adjustment of the minimum wage on January 1 of each year thereafter.

### **MINIMUM WAGE CLASS ACTIONS - VETOED**

SB 174 would have allowed an employee whose rate of pay is less than twice the minimum wage at the time of a violation to bring a civil class action suit to recover unpaid minimum wages or overtime compensation on behalf of him/herself and other current and former employees similarly situated.

### **REST PERIOD FOR AGRICULTURAL AND GARMENT WORKERS - VETOED**

AB 755 would have required employees to be paid for any rest period mandated by law, would have required that the rate of pay for the rest periods of piece-rate workers in the agricultural and garment industries be the average piece-rate wage, and would have provided that an employer who failed to pay required wages for rest periods would be liable for the employee's unpaid average piece-rate wage for each violation.

### **SEVERANCE OFFERS - VETOED**

AB 1310 would have prohibited employers with 25 or more employees from offering anything of value to an employee in order to obtain a voluntary resignation, unless the employer provided certain disclosures to the employee.