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New California Employment Legislation, and Issues for 2005

WAGE AND HOUR

1. Changes to the “Sue Your Boss” Law (SB 1809)

Senate Bill 1809 added several procedural safeguards to California’s Private Attorneys General Act to soften the law’s impact on employers. The safeguards generally include: 1) requiring employees to file a notice of claim against the employer with the Labor and Workforce Development Agency before filing suit, and 2) providing employers with an opportunity to cure violations before an employee can sue for penalties. Now, most Labor Code violations that involve posting, notice, agency reporting, or file requirements no longer carry the penalties established by the “Sue Your Boss” Law, and cannot be enforced by a private lawsuit. In addition, courts must now approve any penalties in connection with any settlement agreement.

2. New Federal Overtime Regulations

Federal overtime regulations were substantially revised in 2004 for the first time in decades. Although the revised federal regulations do not change California’s overtime requirements, there are significant changes for employees working in states that do not have more strict overtime laws than the Fair Labor Standards Act. The regulations created a new exemption for employees earning \$100,000 or more per year. The regulations also revised the requirements for the computer professionals exemption under federal law.

3. Proposed Meal Period Regulations

On December 10, 2004, the Division of Labor Standards Enforcement (DLSE) proposed emergency regulations to reform and clarify the current meal and rest period laws. If enacted, the regulations will provide more flexibility regarding when an employer must provide a one-half hour, duty-free meal period for employees. Most significantly, the proposed regulations would require an employer to provide an initial meal period to an employee before the end of the sixth hour of work in a workday, and would allow an employee to begin a meal period after the end of the sixth hour of work as long as the employer made a meal period available to the employee before the end of sixth hour of work and the employee had an opportunity to take it (unless otherwise required by an IWC order). The proposed regulations would also clarify that the one-hour of pay an employer must pay for each workday in which a meal or rest period is missed is considered a “penalty,” thereby reducing the statute of limitations to bring a claim from three-years to one-year. In February 2005, public hearings are scheduled to discuss these proposed regulations.

PRIVACY

4. Electronic Storage of I-9 Forms to Be Permitted (H.R. 4306)

On October 30, 2004, President Bush signed H.R. 4306, which amends the Immigration Reform and Control Act to permit electronic completion, signature and storage of I-9 forms for all employees. The law will go into effect either when the Department of Homeland Security issues final regulations implementing the law, or 180 days after the law was signed, whichever is sooner. Once the new law takes effect, employers will be able to scan and store existing I-9 forms electronically, and dispose of the paper originals.

5. Restrictions on Use of Social Security Numbers (SB 1618)

By January 1, 2008, employers can include only the last four digits of an employee's social security number, or an existing full employee identification number, on an employee's itemized wage statement. Employers are also prohibited from publicly displaying customers' or employees' social security numbers.

6. Security Measures to Protect Personal Information

Employers with personal information about California residents, including social security numbers, driver's license numbers, bank account numbers, and credit card numbers, must implement and maintain reasonable security measures to protect the information from unauthorized access, destruction, use, modification, or disclosure.

HARASSMENT/DISCRIMINATION

7. Mandatory Sexual Harassment Training (AB 1825)

California employers with 50 or more employees, including independent contractors and out-of-state employees, are required to provide at least two hours of interactive sexual harassment prevention training every two years to all employees with supervisory authority. The training must be presented by educators with expertise in the prevention of sexual harassment and retaliation, such as employment attorneys and human resource professionals.

[Please see Hoge Fenton handout for more detailed information]

8. Discrimination and Harassment Claims and Prevention (AB 2900)

Assembly Bill 2900 updated various state laws, including provisions of the Labor Code, to incorporate the same bases of discrimination prohibited under the Fair Employment and Housing Act (FEHA). These laws now prohibit discrimination on the basis of race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, gender, age, and sexual orientation.

9. Expanded Rights for Domestic Partners (AB 205, 2208)

Assembly Bill 205 provides that registered domestic partners have the same state law rights and obligations as spouses. Assembly Bill 2208 (The California Insurance Equality Act) requires health insurers to provide the same health coverage for domestic partners of employees as is offered for spouses of employees.

WORKERS' COMPENSATION / DISABILITY

10. Workers' Compensation Reform (SB 899)

Senate Bill 899 reformed the workers' compensation system to reduce costs for employers and change the way employee injuries are determined and treated. Among other changes, the process for determining impairment and treating injuries is more uniform, by requiring doctors to follow nationally recognized guidelines and standards. Employers can create their own network of medical providers for treating injured employees. The law limits temporary disability benefits to two years for most injuries, closes the loophole that allowed multiple disability awards in excess of total disability, apportions employer responsibility based on the extent of an injury that was caused by an employee's existing job, and reduces benefits for minor permanent injuries and for employees who receive reinstatement offers. The new law also makes significant procedural and substantive changes to the penalties for unreasonable delays in payment of claims.

11. Posting Workers' Compensation Insurance Fraud Convicts

The California Department of Insurance must post information on its website regarding insurance fraud convictions involving workers' compensation insurance, benefits, or services, including posting the offender's name and address, the offense, the amount of money defrauded, and the punishment imposed. The information must be posted for five years or until the conviction is reversed or expunged.

MISCELLANEOUS LEGISLATION / ISSUES

12. Limitation on Unfair Business Competition Claims

Under Proposition 64, to sue under California's unfair business competition law, an employee must have actually suffered a loss from an unfair or illegal act. Prop 64 also requires strict class action certification procedures for anyone filing an unfair competition suit on behalf of a group.

13. Reducing Employer Fines for Employees' Crimes

Under new amendments to the Federal Sentencing Guidelines, an effective compliance and ethics program that includes providing training to all employees and agents can reduce an employer's fines for criminal convictions based on an employee's conduct by up to 90 percent.

14. Senior COBRA Repealed (AB 254)

Assembly Bill 254 repealed the law that required employers to offer extended health coverage to former employees over the age of 60 who were not yet eligible for Medicare.

15. Bargaining Rights of Joint Employees (NLRB Decision)

An employee who is jointly employed by an employer and a staffing agency may not be included in the same bargaining unit as the employer's other employees without the consent of both joint employers. [This reverses the NLRB's stance during the Clinton administration].

SIGNIFICANT VETOES IN 2004

Minimum Wage Increase Vetoed: AB 2832 would have raised California's minimum wage by \$1.00 to \$7.75 by 2006, giving California the highest minimum wage in the nation. Currently, California has the fifth highest state minimum wage.

Electronic Monitoring Prohibition Vetoed: SB 1841 would have prohibited employers from monitoring employee activities on electronic devices such as computers and telephones, without first providing notice to the employee.

Gender Pay Equity Penalties Vetoed: AB 2317 would have increased the penalties and damages an employee could obtain in an equal pay claim against an employer. The Governor noted that the civil penalty for violation of the equal pay requirement was doubled last year.