LYNCH, GILARDI & GRUMMER
A Professional Corporation

CALIFORNIA EMPLOYMENT LAW NEWSLETTER

What's New for California Employers?

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The following is a brief summary of the significant employment law developments since our last newsletter.[1]

ARBITRATION

Unsigned Agreements: An arbitration agreement that was not signed by the employee was unenforceable. *Gorlatch v. The Sports Club.* This was so despite the fact that the employee was the Human Resources Director charged with obtaining signatures of all employees on mandatory arbitration agreements. *Comment*: The court here found that the employee's failure to sign the agreement was an implied rejection of the arbitration agreement.

Federal Arbitration Act: The United States Supreme Court reversed a state court decision refusing to enforce an arbitration agreement. *Nitro-Lift Technologies, LLC v. Howard.* The court reiterated that it is appropriate for courts to determine, in the first instance, the validity of an arbitration clause in a contract, but that it is for the arbitrator to determine the validity of the terms of the contract itself. *Comment:* In this case, the arbitration provision in question was a non-compete agreement.

LEGISLATION

Affordable Health Care Act: Beginning in 2014, large employers will be required to provide employees with health insurance through a system of subsidies and penalties. A provision of the Act also allows small businesses to pool together to increase their purchasing power. *Comment*: The details of the Act are far too great to enumerate here. Employers should consult with either their insurance brokers or employment counsel for details.

FCRA Deadline: Beginning January 1, 2013, employers must provide a new form to prospective or current employees on whom they plan to do a credit check using an outside agency. Also, the Consumer Financial Protection Bureau (CFPB) will be the enforcing agency rather than the FTC. Enforcement regulations prescribe modified versions of the following forms: (1) "Notice to Users of Consumer Reports: Obligations of Users Under the FCRA," (2) "A Summary of Your Rights Under the Fair Credit Reporting Act," (3) "Notice to Furnisher's of Information: Obligations of the Furnishers Under the FCRA." *Comment:* The modified language is available online or through our office upon request.

WAGE & HOUR

Minimum Wage Rate: The minimum wage rates for exempt computer software employees, physicians, and surgeons have increased. *California Labor Code §§ 515.5 and 515.6.* Computer professionals: $39.90 per hour; and licensed physicians or surgeons: $72.70 an hour. *Comment:* These changes obviously have limited applicability

Rounding Hours Worked: It is permissible to round out the hours worked if done correctly. Under a "nearest 10th" rounding policy, in and out punches are rounded (up or down) to the nearest 10th of an hour (every six minutes beginning with the hour mark). *See's Candy Shops, Inc. v. Superior Court (Silva).* It

[1] This summary is intended to be a brief overview of significant legal developments and is not an in-depth analysis of the cases or statutes discussed. Our clients are advised to contact their employment attorney before making significant decisions related to the legal developments reported herein. *NOTE*: These cases have not been updated/cite-checked since they were first reported.

is acceptable, for example, to round to the nearest three-minute mark. *Comment:* For example, if an employee clocks in at 7:58 AM, a timekeeping system can round up the time to 8:00 AM so long as when the employee clocks in at 8:02 AM, the same system should round it down to 8:00 AM.

OTHER DEVELOPMENTS

FMLA: Visible signs of an injury may be sufficient to constitute a "report" of the need for FMLA leave. *Clinkscale v. St. Therese of New Hope*. In this case, when given a changed job assignment, the employee began crying and shaking so severely that she requested an ambulance for herself. When she later met with her doctor, he diagnosed her with a "situationally triggered" anxiety attack and prescribed therapy and medication for her. *Comment:* Although this holding is from a federal court outside of California, it fairly states California law with respect to visible conditions.

Labor: NLRB administrative law judge held that an employer's requirement that employees sign acknowledgements that the employees' at-will status "could not be amended, modified or altered in any way" was unlawful because "clearly such a clause would reasonably chill employees who are interested in exercising their (NLRA) section 7 rights to engage in protected concerted action." *Comment:* Although untested, perhaps the following language may avoid this pitfall: "The at-will nature of employment with employer may be modified only if in writing, signed by you or your representative, and an authorized employer representative."

Wrongful Termination: No claim for wrongful termination of employment exists where an employer decides not to exercise an option to renew a contract (rather than to terminate an existing one). *Touchstone Television Productions v. Superior Court*. This case involved an agreement which gave the employer an exclusive option to renew an actress' contract on an annual basis. *Comment:* The courts generally treat refusals to renew contracts as refusals to enter into a new contract rather than termination of an existing one.

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If you have questions regarding any of the aforementioned employment law developments, contact your LGG attorney or Ron Souza at rsouza@lgglaw.com.

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