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California Employment Law Newsletter

What's New for California Employers?

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The following are the significant employment law developments since our last newsletter.[1]

WAGE AND HOUR

Language Home Study: An employer that provides employees with paid overtime to learn English, does not have to compensate employees who voluntarily take materials home to gain more English-language proficiency. *Labor Department Wage and Hour Opinion Letter, FSLA 2006-5 3/3/06*. As long as the employee has volunteered to take the materials home, and the training is not directly related to the worker's job, they need not be compensated under the Fair Labor Standards Act (FSLA). *Comment*: Employees who engage in self-study to improve their language proficiency (and thus job skills) are to be commended-but not compensated.

Meal and Assigned Rest Periods: Since 2001, the California Labor Code (CLC) § 226.7(b) provides an employer "shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each day a meal or rest period is not provided". The California Supreme Court will decide whether that one hour will be considered a "penalty" or "wages" under California law. *Murphy v. Kenneth Cole Productions, Inc.* The difference will be significant to employers who are sued for these violations as it will determine whether the employee can seek damages going back one year (if it is a penalty) or three years (if it is wages). *Comment*: While the distinction between "penalties" and "wages" seems highly technical, it will have a significant impact on employers who are sued for meal or rest period violations. The importance of the decision will be magnified by the fact that most insurance covering employment actions does *not* cover payment of wages or penalties so that employers will be ultimately stuck with the tab for any such successful actions brought against them.

INDIVIDUAL RIGHTS AND SIGNED LIABILITIES

Computer Fraud: Employees who leave an employer and on the way out the door destroy employer's computer data may be liable under the Federal Computer Fraud and Abuse Act (FCAA). *International Airport Centers v. Citron*. Here, a disgruntled employee decided to go into business for himself, but before leaving his employer savagely attacked their files by deleting all of the data on his laptop computer that his employer had provided to him. He then installed a secure-erasure software program, making it impossible for his former employer to recover any of the deleted information. *Comment*: Although this is a decision from another jurisdiction, it invokes Federal law applicable in all states. As such, it is some authority that could be used by California employers seeking to redress harm caused by departing employees.

[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.

Corporate Officer Liability: Corporate officers are not individually liable for "delinquencies in paying outstanding wages, expenses, interest and penalties". *Jones v. Gregory*. The fact that a Corporate Officer has operational control does not make him "an employer" for purposes of liability under the Labor Code. *Comment*: Remember, in California individuals can be liable for penalties for State overtime violations (CLC § 558). The courts in other states have held that a corporation's president can be liable where he/she has an ownership interest and exerts operational control of the company.

DISCRIMINATION

Hate Crimes: An employee suing for racial discrimination could include a claim for violation of the Unruh Act, which prohibits discriminatory violence, intimidation and denial of Civil Rights based on race. *Stamps v. Superior Court*. Here, an African American employee claimed that his supervisor verbally harassed him with racist remarks, yelled at him, physically threatened him for not completing work assignments, and generally placed him in unsafe work conditions without proper equipment and training, all on account of his race. The court found that the Unruh Act applied to employment cases also. *Comment*: This case puts yet another arrow in the quiver of employees who allege harsh treatment based on a protective classification.

Disability: An employer's duty to reasonably accommodate a disabled worker did not obligate the employer to convert a temporary light-duty position into a permanent one because doing so in effect would create a new position, which is not required under FEHA. *Raine v. City of Burbank*. Here, a police officer with a knee injury was assigned to a desk job during a recovery period. The front desk job was otherwise staffed by civilians who were compensated substantially less than police officers. When it was determined that his disabilities were permanent, the court found that the employer was not obligated to assign him at the desk job indefinitely as an accommodation. *Comment*: This is an important decision as employers are many times caught in a quandary in how to accommodate recovering employees without creating new positions for them. The court held that an employee could not claim that a temporary assignment, made while he was recovering from an injury, obligated the employer to leave him in that assignment indefinitely.

MISCELLANEOUS

Labor-Management Committees: Federal and State law authorizes union-management groups to monitor compliance with labor laws, including payment of prevailing wages on construction jobs. *Helix Electric Inc. v. California*. Here, the court found that the PWCP was a labor-management group established by the National Electrical Contractors Association and the International Brotherhood of Electrical Workers in was thus a Labor-Management Committee sanctioned under California Labor Code §1776(e). As such, they had the right to obtain the names and addresses of employees on Public Works Projects in order to monitor the payment of prevailing wages to them. *Comment*: These Labor-Management Committees are becoming more prevalent as a means of

policing compliance with State and Federal Labor Laws by non-union companies. The management side of the Committee is interested in seeing that the non-union companies with which they compete with for jobs are complying with State and Federal Labor Laws to ensure that their bids are not unfairly low due to non-compliance with Labor Laws.

FMLA: An employee could not prove a violation of the Family and Medical Leave Act (FMLA) where he was terminated when he swore and challenged his supervisor after a medical leave request was denied. *Denny v. Union Pacific Railroad Co.* Here, the court found that there was evidence to support a judgment for the company who terminated plaintiff after challenging his supervisor to "take it outside" after his supervisor denied a leave request. *Comment*: A dissenting judge felt that the employee should have prevailed as his actions "stemmed directly from (his) legitimate request for leave and therefore, are protected".

Arbitration: Where an employer conditions the investigation of an employee's harassment claim on an employee signing an arbitration agreement, the agreement is unenforceable. *Springs v. Ralph's Grocery Company*. Here, the employee was required to submit complaints regarding harassment on forms through which they also agreed to submit the resolution of the dispute to binding arbitration. *Comment*: This is an unpublished decision which means it cannot be cited as authority by attorneys in lawsuits. However, it emphasizes the principle that arbitration agreements must be freely entered into to be enforceable.

Workers' Compensation: A police officer who injured his leg while playing in an off-duty pickup basketball game was not entitled to workers' compensation benefits. *City of Stockton v. WCAB.* Although the workers' compensation judge and the Workers' Compensation Appeal Board (WCAB) found that the injury arose out of the police officer's employment, the California Appellate Court found otherwise. *Comment*: Generally, voluntary, off-duty participation in recreational, social or athletic activities, does not fall within the Worker's Compensation laws. Contrary wise if the activity is a "reasonable expectancy of" the employment or was "expressly or impliedly required by" the employment.

HIPAA Compliance Deadline: By April 21, 2006, small health plans (which reach employers with health insurance premiums or self-insured claims of under $5 million) must implement administrative, physical and technical safeguards to ensure the integrity and confidentiality of health information and to protect against threats to security and unauthorized uses and disclosures of health information to which it has access. *Comment*: This deadline is the latest in a series of deadlines prescribed by Federal Legislation (Health Insurance Portability And Accountability Act of 1996). Large group plans (and employees insured hereunder) were required to comply by April 14, 2003. The smaller plans (which apply to most employers) are required to comply with this law by April 21, 2006.

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