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California Employment Law Newsletter

What's New for California Employers?

HOLIDAY EDITION

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

LEGISLATION

Relatively few new laws were passed that significantly impact employers. Most proposed legislation did not make it past the Governor's veto. The following are the new laws that impact California employers.

Military Spouse Leave: Employees who work at least 20 hours per week and who are spouses of members of the military must be provided up to 10 days of unpaid leave when the spouse is on leave from active duty in the U.S. Armed Forces, Reserves, or National Guard. Only employers of 25 or more employees must comply with this new law. Employees must give two days notice and provide appropriate written documentation. *A.B. 392.*

Workers Compensation Temporary Disability Benefits: This law extends the time an employee may receive aggregate disability payments as a result of a workers compensation injury from two to five years. *A.B. 338.*

Minimum Wage: The minimum wage will increase from \$7.50 an hour to \$8.00 an hour on January 1, 2008.

Cell Phone Use While Driving: The law was passed last year and becomes effective in July 2008. It requires anyone in California who wishes to talk on a cell phone while driving to use a "hands free" device. *Comment:* Employers should implement written policy that requires employees to use "hands free" devices while driving on company business.

New I-9 Forms: New I-9 Forms have been introduced and will be effective until June 2008. (This topic was discussed in our last newsletter.)

New EEO-1 Form: This form has changed (as discussed in our prior newsletter). In particular, "The Officials and Managers" category is now divided into two separate categories and "Native Hawaiian or Pacific Islanders" and "two or more races (not Hispanic/Latino)" have been added to the racial classification list.

Computer Software Specialist: The minimum hourly rate paid to this job classification has been reduced to \$36.00 an hour from \$49.00 an hour. Also, the employee must be primarily engaged in work that is intellectual, creative and requires the exercise of discretion and independent judgment. Labor Code sections 515.5 and 1773.9.

California HIPAA: California's Health Insurance Portability and Accountability implementation Act of 2001 has been extended to 2010. *A.B. 1302.*

Workers Compensation Insurance: The Labor Commissioner has been empowered to systematically identify unlawfully

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.

uninsured employers and prioritize targets for the workers compensation program. The new law requires the director of employment development to share information with the Labor Commissioner so that she can more readily identify unlawfully uninsured employers. *S.B. 869*.

Civil Rights Act of 2007: This law amends the Unruh Civil Rights Acts and affects applications for credit cards, jury service, voter registration programs, participation in Cal Grant programs, emergency services, private membership clubs, and awards of public grants, among others. *Government Code Section 11135*.

Whistleblower Protection: Adds whistleblower protection to physicians and surgeons who complain about unsafe patient care and medical facilities. *Health and Safety Code Section 1178.5*.

Sexual Harassment Training: Legislation was enacted in 2004 that required employers to provide sexual harassment training to supervisors every two years or within six months of being hired or promoted into a supervisory position. Supervisors initially trained in 2005 must be retrained by December 31, 2007.

LABOR CODE CLAIMS

Settlements: The Department of Labor recently supervised a settlement of a wage claim under the California Labor Code. A settlement was reached, but the employee proceeded with a new claim. *Dent v. Cox Communications Las Vegas, Inc.* In this case, the settlement release extinguished claims related to pay “for the period beginning with the work week ending 5/04/02 through 10/11/03. After the settlement, the employee sued for back wages spanning three years before April

28, 2002. *Comment:* Typically, releases extinguish *all claims* by an employee against the settling employer. Probably, Defendant took some comfort in the fact that this case was being supervised by the Department of Labor and did not scrutinize the details of the release as they normally would.

Statute of Limitations: A suit for waiting-time penalties for late payment of wages, but not for back wages as well, was subject to the limitations period of one year. *McCoy v. Superior Court of Orange County*. This case was unusual in that it sought recovery for penalties only. *Comment:* Claims for unpaid wages (e.g., overtime, vacation, etc.), can reach back four years.

DISCRIMINATION

Age: One of the nation’s largest law firms agreed to pay \$27.5 million to 32 former partners to settle an age discrimination lawsuit based on the firm’s mandatory age-based retirement policy. *EEOC v. Sydney Austin LLP*. Sydney Austin agreed that its partners who weren’t members of the executive or management committees were employees protected by age discrimination laws. *Comments:* This case has drawn a lot of attention on the issue of how to manage the retirement of law firm partners. It is important in the larger discussion of how any employers should manage the termination of older workers without violating the ADEA.

Union Liability: The Union can be liable for failure to pursue its members’ discrimination claims. *Beck v. United Foods and Commercial Workers Union, Local 99*. While discrimination claims are typically brought against employers, an employee under a bargaining contract can bring an action against their Union for

failure to prosecute such claims that happen to fall under the Collective Bargaining Agreement. *Comment:* This case reminds unions that their contracts bring not only an entitlement to union dues but also obligations to represent their members as to all aspects of the Collective Bargaining Agreement.

Disability Discrimination: A jury's finding of liability for an employer's failure to engage in the interactive process and no liability for not accommodating an employee's disability were not inconsistent under the Fair Employment and Housing Act (FEHA). *Wysinger v. Automobile Club of Southern California.* Here, the jury found that the employer reasonably accommodated the plaintiff's physical disability and did not discriminate against him. However, it failed to engage in the interactive process to explore all possible accommodations. *Comment:* It is clear that an employer must engage in discussions any time the prospect of a disability accommodation is raised. Failure to do so provides separate grounds to institute a lawsuit.

OTHER DEVELOPMENTS

Wrongful Termination: An employee alleged that he was wrongfully terminated in violation of public policy for protesting a "payment packing" scheme designed to defraud customers. *Casella v. Southwest Dealer Services, Inc.* Here, the Court of Appeals said the employee's wrongful termination case was tethered to Penal Code Section 487, which prohibits making false or fraudulent representation or pretense to defraud another of money. *Comment:* Employers engaging in illegal business practices are typically vulnerable to claims by employees protesting those practices.

Arbitration: An employee handbook referring to mandatory arbitration of employment disputes was insufficient to compel an employee to arbitrate. *Mitri v. Arnel Management Company.* In this case, the employer had not obtained the employee's signature on a separate arbitration agreement. *Comment:* Employers must obtain employee signatures on stand-alone arbitration agreements that contain the necessary language if they hope to hold employees to the obligation to arbitrate.

Privacy: A police officer who was fired after it was revealed that he was involved in a sexually explicit website publication during his off-duty hours. The website showed he and his wife in various sexual poses and activities with others. *Dibble v. City of Chandler.* The website wasn't social or political commentary; it was simply set up to make money. *Comment:* Although public employees don't give up their First Amendment rights when they take their jobs, their interests in freedom of expression are balanced against the interest of their employer's goals. In this case, an investigation concluded the Dibles' participation in sexually explicit activity was having a negative impact on the Department's mission and morale.

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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