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New California Employment Laws for 2007

by Jennifer Brown Shaw

Every year the California Legislature passes and presents hundreds of bills to the Governor. This year was no exception. The Governor signed a number of bills that will affect California employers, which are summarized below. Unless otherwise specified, these laws take effect on January 1, 2007.

Minimum Wage - AB 1835

The Legislature increased the minimum wage to \$7.50 per hour as of January 1, 2007, and to \$8.00 as of January 1, 2008.

This new law will affect California's wage and hour exemptions, which are tied to the minimum wage. The minimum salaries for executive, administrative and professional employees will rise to \$31,200 beginning on January 1, 2007, and to \$33,280 on January 1, 2008.

In addition, employers will be required to replace their Wage Orders and Minimum Wage posters.

Sexual Orientation Discrimination Regarding State Programs and Activities - SB 1441

Existing law prohibits discrimination in programs administrated or funded by the state. This law adds "sexual orientation" to the list of criteria included in Government Code section 11135. It also clarifies the definition of "disability" by cross-referencing the definition under the Fair Employment and Housing Act.

Driving While Talking on a Cell Phone – SB 1613

California drivers will face a traffic ticket for speaking on wireless phones without a headset or other "hands free" technology. Violations will result in a fine, but no "points." There are certain exceptions for drivers using certain "push to talk" phones, certain commercial vehicles, and for contacting emergency vehicles.

This law takes effect on January 1, 2008. Employers should implement or review cell phone use policies to ensure employees follow this law when using a cell phone while driving on company business.

Trade Secrets Claims – SB 1636

In trade secret litigation, the prevailing party may recover expert witness costs in addition to attorneys' fees when the court determines a claim was brought or resisted in bad faith.

Payment of Wages to Terminated Employees – SB 1709, AB 3051

The general rule under Labor Code section 201 is that final pay is due to employees on the date employment terminates. When concert venues and theaters host short-term events, employers find it difficult to pay on the date of termination. SB 1709 permits employers to negotiate a collective bargaining agreement that includes the timing of final pay for workers hired for these short-term assignments. AB 3051 permits employers in the motion picture industry to pay short-term employees

(with one-day or one-week contracts) by the next regular payday, regardless of the existence of a collective bargaining agreement.

Timing of Payment of Overtime Wages – AB 2095

This bill amends Labor Code section 204, governing the timing of wage payments. Under this new provision, employers may pay overtime wages earned during a current period by the next regular payday. Under the law, if an employee earns overtime between the 1st and 15th of a given month, wages are due by the 26th of that month.

Under the new law, overtime pay would not be due until the following pay day, which must occur by the 10th of the next month. Similarly, regular wages earned between the 16th and last day of a month normally would be due by the 10th of the following month. The overtime earned between the 16th and end of the month will not be due until the 26th of the following month.

Mandatory Sexual Harassment Training of Supervisors – AB 2095

This new law clarifies AB 1825, California's mandatory sexual harassment training law. It explains that only supervisors "in California" are subject to training. This law is important to employers who supervise their California employees remotely from other states.

Farmworker Housing – AB 1802

This law modifies the definition of “Farmworker Housing” under the Employee Housing Act. This law is in place to prevent local governments from passing zoning regulations that preclude housing for farm workers and their families. The law is known as an “anti-NIMBY” law (NIMBY means “not in my back yard.”) The law applies to housing of up to a total of 36 beds or 12 beds for any one family.

Workers’ Compensation - AB 2068

California Workers’ Compensation Act was substantially revised in 2004. The Legislature attempted to roll back a number of the reforms this year. AB 2068 is one such measure. This law extends the right of employees to pre-designate their own personal physicians for treatment if the employer offers group health coverage and the doctor agrees. This provision was set to expire in 2007, but has been extended until 2009.

Recommendations

Employers should plan now to comply with the new laws by taking the following steps:

- Continue permitting employees to “pre-designate” a personal physician for treatment of industrial injuries covered by workers’ compensation insurance
 - Plan to implement a cell phone usage policy by January 1, 2008
 - Consider whether to pay overtime compensation in the following pay period as permitted by AB 2095
 - Review exempt employees’ salaries to ensure they comply with the minimum wage law.
- Update posters to comply with the new minimum wage law
 - Revise sexual harassment training programs to include only supervisors who physically are present in California (if desired)

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