

THE DAILY RECORDER

December 6, 2007

New Laws for California Employers in 2008

by Jennifer Brown Shaw and Becki D. Graham

With the New Year comes new legislation. This year, the Legislature presented Governor Schwarzenegger with a number of workplace-related bills. The Governor chose to veto a significant number of bills that would have significantly impacted employers, and signed a few with which employers will need to comply come January. In addition to the legislation the Governor signed this year, a few laws from past years become effective in 2008. The key laws are summarized below.

New Laws Passed in 2007

Alternative Workweeks for Pharmacists – AB 812

All pharmacists who work in the mercantile industry and are employed pursuant to Wage Order 7 will be allowed to adopt the alternative workweek schedules allowed by Wage Order 4. This is important because Wage 7 requires alternative workweek schedules that provide for two consecutive days off within a workweek. Wage Order 4 does not impose this requirement. Wage Order 4 also permits 3/12 schedules without daily overtime. Wage Order 7 does not.

Military Spouse Leave – AB 392

Employees who work at least 20 hours per week and who are spouses of a member 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 with 25 or more employees must comply with this new law. Employees must give two days' notice

and provide appropriate written documentation.

Though the law does not expressly say so, the term "spouse" includes a registered domestic partner. Family Code section 297.5 provides that registered domestic partners must be granted the same rights as those granted to spouses.

This bill became effective immediately (October 2007) and is codified in section 395.10 of California's Military and Veterans Code.

Hourly Rate for the "Computer Exemption" – SB 929

This law amends Labor Code section 515.5 and reduces the hourly rate computer employees must earn to be exempt from California's overtime requirements to \$36 from the current rate of \$49.77 per hour. The Division of Labor Standards Enforcement adjusts the rate annually.

National Guard Qualification for PERS – SB 14

The National Guard has been added to the list of qualifying members for membership in the Public Employees Retirement System ("PERS"). In addition, members of the National Guard may purchase additional PERS service credit.

Workers' Compensation Temporary Disability Benefits – AB 338

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.

Notice of Earned Income Credit Rights – AB 650

Employers now must notify employees they may be eligible for the federal earned income tax credit within one week of the date the employer provides an annual wage summary (W-2 or 1099). An addition to California's Revenue and Taxation Code at section 19850, et seq., contains the exact language for the notice. The law expressly provides that an employer cannot substitute a poster for individual notice. Employers must provide notice to the employee in person or mail to the employee at the employee's last known address.

New Legislation Affecting Public Sector Retirement Systems

A number of legislative bills signed by the Governor addressed the administration of the retirement systems for Teachers and Counties. These included AB 554 and 1307 (Public Employee Benefits); AB 757, AB 1316, AB 1317 AB 1432, and SB 901 (Teacher's Retirement Law); AB 754 and AB 756 (Public Employees' Retirement System Expenditure of Funds for certain bargaining units); AB 246 and AB 1124.

Some of these new laws expand eligibility to participate in the retirement systems. For example, AB 1432 allows a member of the Teachers' Retirement System to purchase credit for service as a teacher at an educational institution located outside the U.S. so long as that

institution receives a portion of its funding from public sources. Others are just administrative housekeeping laws such as AB 757, which makes some technical changes for the administration of the Teachers' Retirement Plan.

Other Changes for 2008

Minimum Wage Changes

The state's minimum wage will increase from \$7.50 to \$8.00 an hour on January 1, 2008, as a result of legislation passed last year.

Cell Phone Usage While Driving

This 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. Employers should take steps to comply with this law by implementing a policy that requires all employees to use "hands free" devices while driving on company business.

Changes to Itemized Pay Statements

Employers are prohibited from including any more than the last four digits of an employee's social security number or an existing employee identification number on the employee's itemized pay stub. January 1, 2008 is the deadline for all employers to comply with this requirement. SB 1618, passed in 2005, amended Labor Code section 226 to impose this requirement.

New I-9 Form

A new I-9 form has been introduced that will be effective until June 2008. The only substantive change is to the list of acceptable employment authorization documents. The list has been expanded to include employment authorization documents issued by the U.S. Citizenship & Immigration Services (USCIS). A number of acceptable

documents have been removed, including a Certificate of U.S. Citizenship, Certificate of Naturalization, Refugee Travel Document and Alien Registration Receipt Card.

New EEO-1 Form

Employers may have noticed some changes this year when filing their annual EEO-1 Report. The EEO-1 form has two distinct changes from years past: (1) the "Officials and Managers" category is now divided into two separate categories; and (2) "Native Hawaiian or Other Pacific Islander" and "Two or More Races (Not Hispanic/Latino)" have been added to the racial classifications list.

New Posters/Pamphlets

There are several new or revised posters and pamphlets that employers should ensure they have in their workplaces, including the updated DFEH harassment poster (DFEH-162), the new minimum wage poster that accurately reflects 2008's new rates, and updated pamphlets on paid family leave and state disability insurance published by the EDD.

Legislation Vetoed by the Governor

The Governor vetoed a number of bills this year that could have affected California employers, a summary of which is provided below. These failed bills are important because they may re-appear in future sessions, and because they may suggest trends in the dynamic area of employment law.

- Fine for employers who violate certain laws related to union lockouts (AB 504);
- Penalties for misclassifying employees as independent contractors (SB 622);
- Changes to the formula for computing payment for injuries causing permanent disability that would have doubled disability payments by 2010 (SB 936);

- Allow employees who do not return to work within 60 days after a disability to receive supplemental job displacement benefits (SB 942);
- Require employers to spend 7.5% of payroll on health care (AB 8);
- Extend meal and rest periods requirements to pool lifeguards and stage assistants (AB 124);
- Mandate employers to provide bereavement leave (SB 549);
- Add "familial status" as a protected category under the FEHA (SB 836);
- Require farm labor contractors to disclose the names and addresses of entities that secured the employer's services on an employee's itemized pay statement (AB 377);
- Expand the definition of "family member" for the family temporary disability insurance program ("paid family leave") (SB 727);
- Make choice of law provisions in employment contracts unenforceable (AB 1043);
- Change the laws regarding the time period for which an employer must maintain employee records (AB 1707); and
- Remove the secret ballot election requirements for union representation and replace it with a "sign-up" process (SB 180).

Recommendations

Employers should take steps now to comply with the new laws by reviewing their current policies and practices, and making appropriate revisions. To get a head start, employers should:

- Obtain the new minimum wage poster and other updated posters/pamphlets.
- Implement or plan to implement a cell phone usage policy before June 2008.
- Revise leave policies immediately to include military spouse leave.
- Ensure that employee itemized pay stubs only show the last four

digits of an employee's social security number.

- Review section 19850 of the Revenue and Taxation Code and prepare a written notice to distribute to all employees advising them of their earned income credit rights.

\\Svsbs\Users\rstover\My Documents\New laws.DOC

Reprinted by permission of The Daily Recorder.



jshaw@shawvalenza.com

Jennifer Brown Shaw is a partner at Shaw Valenza LLP. Her practice includes providing regular advice and counsel to private and public sector employers. She also develops and presents seminars on legal issues in the workplace for management and non-supervisory employees.



300 Montgomery Street, Suite 788
San Francisco, California 94104
Tel: (415) 983-5960
Fax: (415) 983-5963

520 Capitol Mall, Suite 630
Sacramento, California 95814
Tel: (916) 326-5150
Fax: (916) 497-0708

www.shawvalenza.com