

Labor and Employment Law Update January 1, 2010

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I LEGISLATIVE UPDATE

A. Summary of California Bills Signed Into Law

1. Definition of “Work Unit” for Alternative Workweek Schedules Expanded (AB 5)

Every private employer in California is covered by one or more Industrial Welfare Commission (IWC) Orders and by the California Labor Code. With very few exceptions, the IWC Orders and the Labor Code mandate payment of overtime compensations to employees who work more than 8 hours in workday and over 40 hours in a workweek. Double time must be paid when an employee works more than 12 hours per day. One of the exceptions allowed under California law is for eligible employees to vote for an alternative workweek schedule whereby the employees agree to work longer workdays but shorter workweeks. An example is what is known as a 4-10 workweek. The rules for implementing an alternative workweek are fairly onerous. Specific rules must be followed to properly establish an alternative workweek. The rules include the requirement that employees be informed about the alternative workweek menu of options that are being offered. AB 5 clarified that one of the menu of options that can be offered is the regular schedule of 8 hour day with specified overtime compensation.

2. Labor Code Provisions and Regulations Applicable to Car Washes Extended to January 1, 2014 (AB 236)

California Labor Code Sections 2050 – 2068 establish registration requirements for car washes. The registration requirements are detailed and place significant obligations on owners of car washes. The provisions were set to expire on January 1, 2010. AB 236 extended the expiration date to January 14, 2014. The new statute also clarified that new motor vehicle dealers and automotive repair dealers are not employers for purposes of those sections of the Labor Code.

3. Limitations On Use Of Medical Provider Network (AB 361)

AB 361 provides that, regardless of whether an employer has established a medical provider network or entered into a contract with a health care organization, an employer that authorizes medical treatment shall not rescind or modify that authorization after the medical treatment has been provided for any reason, including, but not limited to, the employer's subsequent determination that the physician who treated the employee was not eligible to treat that injured employee. This bill provides that its provisions shall not be construed to expand or alter the benefits available under, or the terms and conditions of, any contract, including, but not limited to, existing medical provider network and health care organization contracts. In addition, the bill provides that its provisions shall not be construed to impact the ability of the employer to transfer treatment of an injured employee into a medical provider network or health care organization.

4. Leave of Absence For Eligible Members of the California Civil Air Patrol (AB 485)

This bill creates Labor Code Sections 1500-1507 and establishes a new leave of absence for eligible members of the Civil Air Patrol. AB 485 requires employers employing more than 15 employees to provide not less than 10 days per year of leave, beyond any leave benefits otherwise available to employees, to eligible employees who have been employed by that employer for at least 90 days immediately preceding the commencement of leave. Eligible employees must be volunteer members of the California Wing of the Civil Air Patrol, and who have been duly directed and authorized by a political entity that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission of the California Wing of the Civil Air Patrol. The employees are required the employer as much notice as possible of the intended dates upon which the leave would begin and end. The employer, upon expiration of the Civil Air Patrol leave taken by an employee, must restore the employee to the position he or she held when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment, unless the employee is not restored because of conditions unrelated to the exercise of the leave rights by the employee.

5. Applicants For Farm Labor Contractors License And For Registration As A Garment Manufacturer Must Submit Compliance Statement (AB 854)

AB 854 requires an applicant for licensure as a farm labor contractor, for registration as a garment manufacturer, for renewal or reinstatement of the license or registration, and for a change in key personnel, to submit a statement as to whether he or she has satisfied all requirements involving unpaid wages in a final court judgment, a final order issued by the commissioner, or an accord. The new law subjects any person who provides false information on the statement to a civil penalty. The commissioner is required to deny the application if the statement shows unpaid wages, unless the applicant submits a bond or

cash deposit to guarantee payment of the wages or a notarized accord demonstrating satisfaction of the obligation.

6. Prohibition Of Engaging in Advance-Fee Talent Representation (AB 1319)

AB 1319 prohibits a person from engaging in an advance-fee talent representation service, as defined. The bill imposes additional disclosure and contract requirements for a talent service. A willful violation of its provisions is now a misdemeanor and subject to a civil action.

7. Increases In State Income Tax Withholding (ABX4-17)

Effective November 1, 2009, employers were to begin using a new state income tax withholding table to increase by 10% the amount of income taxes withheld based on existing claimed exemptions.

8. Same Sex Out Of State Marriages Recognized As Legal In California (SB 54)

Effective January 1, 2010, a valid marriage entered into outside of California between persons of the same sex prior to the effective date of Proposition 8 will be recognized as a valid marriage in California. Proposition 8 became effective November 5, 2008. Such couples will be entitled the same rights, protections, obligations and duties in California as are granted or imposed upon spouses, with the sole exception of the designation of “marriage”.

9. Owner or Operators of Agricultural Production and Processing Facilities Must Identify Competent Employee To Maintain and Test Manlifts (SB 478)

This new law requires an elevator company to disclose its status as a certified qualified conveyance company prior to bidding on a project or contracting for services. SB 478 also authorizes the owner or operator of agricultural production, processing, and handling facilities to designate a competent employee who is not required to be a certified competent conveyance mechanic to maintain and test, as specified, the manlifts used at the facilities.

B. Selected Bills Vetoed By Governor Schwarzenegger

1. AB 527 (This bill would have required that if the Labor Commissioner finds that there is a pattern of falsification of the payroll records submitted for any pay period relating to any claim or complaint brought pursuant to the commissioner’s authority, all payroll records relating to that claim or complaint must be presumed false.)

2. AB 793 (This piece of legislation was introduced in response to the U.S. Supreme Court decision in *Ledbetter v. Goodyear*. The bill specified when a cause of action for unlawful discrimination or unlawful employment practice with respect to compensation accrued for determining whether a complaint was filed within statutory deadlines. The legislation would have expanded claims and damages from person alleging that they were denied equal pay based on gender.)
3. AB 838 (This bill would have required the Occupational Safety and Health Standards Board, by July 1, 2011, to adopt a standard for controlling the risk of occurrence of heat illness where employees work indoors.
4. AB 943 (Would have prohibited an employer, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes unless the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, or confidential information, and (2) the position of the person for which the person is sought is a position in the state Department of Justice, a managerial position, a position in a city, county, or both city and county, that of a sworn peace officer or other law enforcement position, or a position for which the information contained in the report is required to be disclosed by law or to be obtained by the employer.)
5. AB 1288 (This bill relates to the E-Verify system and would have prohibited the state, or a city, county, city and county, or special district, from requiring an employer, other than one of those government entities, to use an electronic employment verification system except when required by federal law or as a condition of receiving federal funds.
6. AB 1562 (This bill would have prohibited an employer from terminating an employee because the employees' wages had been threatened to be garnished or subject to garnishment for the payment of five or fewer judgments at any one time.)
7. SB 789 (Consistent with his veto of previous attempts, the Governor vetoed this bill which would have permitted agricultural employees to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the

labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.)

C. **Changes to Federal Statutory Law**

1. **Family and Medical Leave Act.**

President Obama signed the National Defense Authorization Act for Fiscal Year 2010 on October 28, 2009. The statute included language that expanded the two types of military related leave that recently became available under the Family Medical Leave Act. The key changes are as follows:

a. **Expansion of Qualifying Exigency Leave**

Qualifying exigency leave is now available to eligible family members of the National Guard and Reserves in addition to the regular Armed Forces.

b. **Expansion of Military Caregiver Leave to Families of Veterans**

The modifications to the law apply to veterans as defined by the Department of Veteran Affairs. The expanded leave of absence rights apply to family members of veterans who were family members when the veteran was a member of the Armed Forces at some point in the five years preceding the date on which the veteran undergoes the medical treatment or receives the therapy that necessitates the leave.

c. **Expansion of Definition of Serious Illness or Injury**

The definition of Serious Illness or Injury is expanded to include illness or injury that “existed before the beginning of the members’ active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.”

D. **Other Changes of Note**

1. Beginning January 1, 2010, the recommended IRS mileage reimbursement rate for business miles will be reduced to 50 cents per mile.
2. Effective August 7, 2009, employers were to begin using a new I-9 form. The new form includes several changes to the types of documents that can be accepted for purposes of determining identity and authorization to work. Expired documents can no longer be accepted. Employers will need to download the new form, carefully check the list of acceptable and unacceptable documents and complete the I-9 correctly. Employers do not need to go back and change or update previously completed I-9 forms.

3. Effective September 8, 2009, many federal contractors and subcontractors were required to use E-Verify. The use of E-Verify will only be required if specific language is included in the contract requiring use of the system. If a Company is not required to use E-Verify, it may not use E-Verify.