



Law Offices of Mary L. Topliff

Workplace Wave



New California Employment Laws (And Some That Were Vetoed)

By Mary L. Topliff, Esq.

In his State of the State address in January 2007, Governor Schwarzenegger announced his agenda, focusing primarily on health care, environmental and disaster preparedness issues. As is the case before a legislative session begins, the Governor and the legislators expressed vows of cooperation. In years past, we have seen these cooperative efforts result in a sweeping workers' compensation reform bill and a minimum wage increase.

This year, however, two health care reform measures were passed, but the Governor vetoed them. Although no agreement was reached on health care, many bills were signed into law. In all, the Legislature sent 964 bills to the Governor, who signed 750 and vetoed 214.

New Laws

The following are significant employment laws going into effect January 1, 2008, unless otherwise noted.

1. Computer Professional Overtime Exemption Revision (SB 929, Cogdill)

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Public Speaking

Ms. Topliff will be one of the featured speakers at the two-day 2007 California Employment Law Update conference on December 12, 2007 at the Claremont Resort & Spa in Berkeley, sponsored by the Employer Resource Institute. She will be presenting a Wage & Hour update.

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Under current law (Labor Code § 515.5), this overtime exemption applies to specified computer professional positions and requires that the employee is paid a minimum hourly rate of \$49.77 per hour (which equates to \$103,522 per year so long as the employee worked a maximum of 2,080 hours in the year). The hourly rate is adjusted each year (on October 1) based upon the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

SB 929 amends the Labor Code section by lowering the minimum hourly rate to

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\$36.00, or the annualized full-time salary equivalent of that rate, provided that in each workweek the employee receives not less than \$36.00 per hour worked. This rate will be adjusted each year based on the Consumer Price Index.

Beginning in January, an employee who otherwise meets the requirements of this exemption may be paid an annual salary of \$74,880 so long as the employee actually works up to 2,080 hours in the year and so long as the weekly pay equates to at least \$36.00 for each hour worked.

Employers should keep in mind that the computer professional exemption requirements are narrow, including only those who are highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming and software engineering, among other things. The minimum hourly pay requirement has been frequently misapplied as employers would simply annualize the rate without taking into account that the employee must be paid for all hours worked at that minimum rate. Efforts to amend this Labor Code section to refer to an annual salary not based on actual hours worked have failed. However, SB 929 is welcome news in lowering the monetary threshold in a significant way.

2. Time Off During Spouse's Leave from Military Deployment (AB 392, Lieu)

One of several military-related bills the Governor signed as a package, AB 392

provides that employers with 25 or more employees, including state and local governments, must allow an employee who is the spouse of a qualified member of the military, as defined, who works an average of 20 or more hours per week, with up to 10 days of unpaid leave during a "qualified leave period." Its stated intent is to serve the families of those troops currently serving in the military conflicts in Iraq and Afghanistan, and to assure that these families are able to spend time together during the qualified member's leave from deployment.

A "qualified member" of the military includes a member of the Armed Forces who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President, or a National Guard or Reserves member who has been deployed during a period of military conflict. "Qualified leave period" means the period during which the member of the military is on leave from deployment during a period of military conflict. Employees must provide notice of their intention to take the leave within at least two business days of receiving official notice that their spouse will be on leave from deployment.

This law was enacted as an urgency statute and went into effect on October 9, 2007.

3. Civil Rights Act of 2007 (AB 14, Laird)

Under current law, the Unruh Civil Rights Act entitles all persons within the jurisdiction of the State of California to the

full and equal accommodations, facilities, privileges and services in all business establishments, regardless of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status or sexual orientation.

AB 14 enacts the Civil Rights Act of 2007 and provides the protections against discrimination based on protected classes under the Unruh Civil Rights Act to a wide variety of situations that are regulated by law, such as jury service, credit card issuance, the Cal Grant program, voter registration programs, food stamp eligibility and membership in athletic clubs. Various laws had not been updated to reflect additions to protected classes under California law, such as sexual orientation discrimination. These regulations will now conform to the more expansive definitions.

Significant Vetoes

- Health Care Reform – AB 8 would have created the Cooperative Health Insurance Purchasing Program as a statewide purchasing pool for health care coverage by employers, requiring employers to make certain health care expenditures based on payroll or pay a fee. The Governor’s veto message states that comprehensive reform cannot place the majority of the burden on one segment of the economy.
- Expansion of Family Leave Law and Paid Family Leave Benefits – AB 537 would have expanded the California Family Rights Act to include leave for

seriously ill grandparents, grandchildren, siblings, parents-in-law and domestic partners. SB 727 would have expanded the state’s Paid Family Leave wage replacement benefit program to cover these types of time off.

- Caregiver Discrimination Protection – SB 836 would have added caregivers (called “familial status”) as a protected class under the Fair Employment and Housing Act.
- Bereavement Leave – SB 549 would have provided certain rights to unpaid bereavement leave.
- Willful Misclassification of Independent Contractors – SB 622 would have imposed additional statutory penalties for such misclassification.
- Expansion of Personnel Record Inspection Rights – AB 1707 would have provided specific timing requirements for an employee’s inspection of personnel records and imposed penalty provisions.