



Law Offices of Mary L. Topliff

Workplace Wave



2005 LEGISLATIVE YEAR IN REVIEW

By Mary L. Topliff, Esq.

Introduction

In 2005, I was appointed Government Affairs Director of the California State Council of Society of Human Resource Management. In this role, I organized our annual legislative conference in Sacramento in May. Many human resource professionals and employment law attorneys gathered to hear from a variety of speakers, including Insurance Commissioner John Garamendi, Labor Commissioner Donna Dell, Assemblyman Keith Richman, and Deputy Legislative Director for the Governor, Paul Navarro. Repeatedly, we heard about the overarching value of grassroots efforts in influencing legislation and the need to make our voices heard. So, what happened with state legislation this year?

The year 2005 in the California legislature is notable for the number of workplace bills that either died in committee or were vetoed by Governor Schwarzenegger.

New Laws

Only a handful of laws were enacted, as follows:

1. AB1093 (Matthews) provides that an employer may deposit the wages or advance on wages in an account in any bank, savings and loan association, or credit union of the employee's choice that has a place of business in the state. It further provides that if an employee is discharged or quits, the employer may pay the wages earned and unpaid as of the employee's last day by depositing the amount into the account authorized by the employee. All other provisions regarding the timing of final pay remain unchanged.

This bill also revised the overtime exemption for computer professionals, addressed in a separate article in this newsletter.

2. SB101 (Battin) clarifies that public and private employers have until January 1, 2008 to change the reporting of employees' social security numbers on their itemized payroll check stubs to include only the last four digits of the number or another employee identification number.

3. AB1400 (Laird) expands the Unruh Civil Rights Act, which prohibits business establishments from discriminating on various bases, to include marital status and sexual orientation. Specifically, the law provides that all persons in the state "are free and equal, and . . . entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatever." It further prevents businesses from boycotting, blacklisting or refusing to sell to or buy from a person because of their protected class. This law also addresses violence and threats based on protected class, political affiliation, or participation in a labor dispute. For the complete text of the Act, now known as the Civil Rights Act of 2005, e-mail topliff@joblaw.com.

December 2005

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Public Speaking

Ms. Topliff is on the Faculty of San Francisco State University's College of Extended Learning's Human Resource Certification Program. She will be teaching Legal Aspects of Human Resource Management on February 14, 16, 21 and 23, 2006 at the San Francisco downtown campus. For more information, contact Ms. Topliff at 415-398-9597.

The California State Council of Society of Human Resource Management Legislative Update Conference will be held on April 24 and 25, 2006 at the Sacramento Sheraton. Contact Ms. Topliff for more details.

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Governor's Vetoes

The following bills were vetoed:

*AB48 (Lieber) would have increased the state minimum wage to \$7.25 per hour in 2006 and further increases in future years;

*SB174 (Dunn) would have authorized claims to be brought on behalf of others for violations of minimum wage and overtime payments without requiring compliance with class action procedures;

*AB1310 (Nunes) would have required certain disclosures and a 21-day time period when employers offer severance to a group of 25 or more employees in exchange for their voluntary resignation;

*AB875 (Koretz) would require the Workforce Development Agency, the Franchise Tax Board and the Joint Enforcement Strike Force on the Underground Economy to develop standards that would trigger an audit or investigation of employers for wage payment and working conditions violations;

*AB879 (Torrico) would change the standard of review by the Superior Court on an appeal of a wage claim decision by the Labor Commissioner if an employer failed to file an answer to the claim or attend the administrative hearing;

*AB985 (Torrico) would require an employer who outsourced a job while an employee was performing active military duty to pay the employee a severance of 6 months' pay; and

*AB524(Chan) would require successful bidders on public contracts for services through the Department of General Services to complete a questionnaire when any portion of the services would be performed by subcontractors or employees outside of the United States, including the percentage of the contract outsourcing represents.

Predictions for 2006

Expect to see a single-payer health insurance program proposed. Senator Sheila Kuehl proposed a bill in 2005 (SB840) that appeared to gain some traction.

Another minimum wage increase bill will likely be proposed for the third year running, based simply on the cost of living in several California cities.

The legislature will continue to try to address the offshoring of jobs from California. Prior efforts have all failed but the issue remains a powerful economic and political force.

For more information on how to comply with any of these new laws or their impact on your workplace, contact the Law Offices of Mary L. Topliff at 415-398-9597.

CALIFORNIA'S COMPUTER PROFESSIONAL OVERTIME EXEMPTION: LEGISLATIVE UPDATE

By Mary L. Topliff, Esq.

California law, Labor Code §515.5, provides an overtime exemption for computer professionals that is different than most exemptions in that it specifically provides for payment by the hour. However, it is this provision of the law that has created confusion and misapplication.

The current law provides that computer professionals, which are specifically defined by the statute, may be paid on an hourly basis regardless of the number of actual hours worked, so long as they are paid at least \$45.84 per hour. This hourly rate is adjusted each year and published by the Division of Labor Standards Enforcement. Many employers have assumed that this law meant that a computer professional employee would meet this exemption if paid on a salary basis that was at least the equivalent of this hourly rate times 40 hours per week, or \$95,347.20 per year. However, the statute specifically referred to paying these employees the required hourly rate for all hours worked. Therefore, if an employee were paid on a salary basis but actually worked more than 40 hours per week, that employee would not have been paid the required base hourly rate and thus, the exemption would not apply.

This year, the California legislature drafted AB 1093 which, in its original form, would have clarified that the exemption would apply if the employee were paid on a salary basis equal to at least the required hourly rate times 40 hours per week. However, the bill was amended during the legislative process and the final version, which goes into effect on January 1, 2006, retains the same requirement that the employee must be paid at least the required hourly rate for all hours worked. It does clarify that employees may be paid on a salary basis; however, an employee will only meet this exemption if he or she has worked 40 hours or less each work week.

Given the continued proliferation of class action wage and hour lawsuits involving overtime exemptions, it is crucial to ensure that all employees are properly classified. Computer professional employees' actual duties must meet the requirements of Labor Code §515.5, and be paid the required minimum hourly rate for all hours worked. Therefore, all hours worked must be recorded by these employees to ensure compliance.

For more information on how to comply with overtime exemptions, contact Ms. Topliff at topliff@joblaw.com.