Law Offices of Mary L. Topliff
Workplace Wave

2006 YEAR-END LEGISLATIVE & REGULATORY UPDATE

By Mary L. Topliff

The 2006 legislative session in California ended in a similar fashion as the 2005 session, with the Democratically-controlled Assembly and Senate passing numerous bills that were promptly vetoed by Governor Schwarzenegger. The most substantial employment-related bill signed by the Governor, an increase in the state's minimum wage, was a foregone conclusion when he announced in early 2006 that he supported such an increase. The following is a summary of important legislative and regulatory developments in California in 2006.

Minimum Wage Increase — Impacts Salary Requirement For Overtime Exemption
Signed by the Governor in September, AB1835 (Lieber) increases California's minimum wage from $6.75 per hour to $7.50 per hour, effective January 1, 2007 and to $8.00 per hour effective January 1, 2008. This bill originally called for an automatic increase tied to inflation indices; however, this language was removed during negotiations. The bill also provides that the Industrial Wage Commission must reissue the various wage orders to refer to this increase as well as a corresponding increase in meal and lodging credits that are tied to the minimum wage.

Keep in mind that the minimum salary requirement for the administrative, executive and professional overtime exemptions in California must be at least two times the state minimum wage. This means that a salaried employee must be paid at least $31,200 per year as of January 1, 2007 to meet the "salary" test for the overtime exemption and $33,280 as of January 1, 2008. There is no proration for part-time employees.

Harassment Prevention Training Clarification
AB 2095 (Niello) limits the two-hour harassment training requirement under the Fair Employment and Housing Act to supervisory employees who work in California. This training is required every other year for supervisors who work for an employer with 50 or more employees and/or independent contractors (regardless of location).

After a lengthy public comment process, in November 2006, the Fair Employment and

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Public Speaking
Ms. Topliff will be teaching a full-day course on Time Off and Leaves of Absence for the California Human Resource Management Institute on February 27, 2007 in Fremont. Contact Ms. Topliff for more details.

Ms. Topliff will be teaching a new advanced level half-day course on Leave of Absence Challenges, beginning on March 27, 2007 in Fremont for the California Human Resource Management Institute. Contact Ms. Topliff for more information.

Housing Commission adopted regulations that provide further clarification on the training law requirements. For example, they cover examples of acceptable forms of interactive training, appropriate content areas, impact of supervisory training received at a prior employer and acceptable forms of tracking compliance. They are expected to be effective in February 2007 and will apply prospectively. For more information about these training requirements, please email topliff@joblaw.com.

Itemized Paycheck Statements
AB 2095 (Niello) also enacted an amendment to Labor Code §204 regarding the information required to be included in itemized paycheck statements. Section 204 had required that each statement show the total hours worked and corresponding pay rate for the pay period in question. This raised an ambiguity when employees worked overtime hours and were actually paid the overtime premium rate for those hours in the following pay period. This new law allows the itemized statements to reflect the overtime hours worked as corrections on the paycheck statement for the following pay period. The corrections must identify the dates of the pay period to which they refer.

Employer Liability For Child Support Obligations
AB 2440 (Klehs) notes an estimated $19 billion in unpaid child support obligations in the state as of January 2006. To address this situation, this new law places potential liability on businesses that "knowingly assist" an employee or service provider who has an unpaid child support obligation in avoiding payment of the obligation. There must be actual knowledge of the obligation, and the following actions are defined as "knowingly assisting" in the avoidance: 1) failing to timely file the New Employee Registry report upon hiring such an individual; 2) failing to timely file the notification required by Unemployment Insurance Code §1088.8 upon hiring such an individual as an independent contractor; or 3) paying wages or other forms of compensation for services rendered in cash, barter or trade.

Significant Vetoes
The following bills were enacted by the legislature but vetoed by the Governor:

- Employer Financed Health Care: SB 1414 (Migden) would have required employers with 10,000 or more employees to spend a prescribed amount on health care coverage or contribute an amount to the state. The Governor's veto message stated, "Singling out large employers and requiring them to spend an arbitrary amount on health care does nothing to lower costs…" He then encouraged the legislature to work with him on this issue in 2007.

- Reporting of Employees Receiving Government Health Services: AB1840 (Horton) would have required employers with 25 or more employees who receive government health services to report this information to the state. The Governor vetoed a similar bill in 2005, stating that he did not view this reporting requirement to adequately address the larger health care crisis.

- Gender Pay Equity: AB2555 (Oropeza) would have increased damages for gender pay discrimination claims. The Governor rejected this bill as unnecessary. ■

PAID SICK LEAVE FOR EMPLOYEES IN SAN FRANCISCO

By Mary L. Topliff

On November 7, 2006, a San Francisco ballot initiative (Measure F) was passed, which requires all employees who work in San Francisco to receive paid sick leave. Effective February 5, 2007, it applies to all employers, regardless of size, and requires that for every 30 hours worked, each employee (temporary, part-time or full-time) accrues one hour of paid sick leave. For employees hired after February 5, they will begin accruing the sick leave after 90 days of employment. If the employer has 10 or more employees, the accrual cap is 72 hours and if the employer has less than 10 employees, the accrual cap is 40 hours. The accrued leave must be carried over from year to year but is subject to this accrual cap. It is not required to be paid out upon an employee's termination.

Employees can use the accrued sick leave for their own illness or medical treatment or that of a family member, including child, parent, legal guardian, sibling, grandparent, grandchild, spouse, or registered domestic partner. If the employee does not have a spouse or registered domestic partner, the employer must provide a 10-day period of time (annually) to allow the employee to designate a person for whom he or she may wish to take time off in the event of that person's illness.

Employers may require employees to give reasonable notice of absences, but may only take "reasonable measures to verify or document that an employee's use of paid sick leave is lawful." Employers cannot take any disciplinary or other adverse employment action against an employee for the use of paid sick leave – a significant departure from most employer policies.

The Office of Labor Standards Enforcement will enforce this ordinance. It is required to publish a notice in various languages for employers to post. The City Attorney may pursue violations as well as aggrieved employees, including in a civil action. Remedies include liquidated damages and the prevailing party's attorneys' fees.

For employers whose paid sick leave or Paid Time Off policies already provide at least the time off accruals required by this ordinance, no additional accruals are required. However, these employers must still comply with the other aspects of the law. ■