

New California Legislation 2005: An Overview

October 6, 2004

California Governor Arnold Schwarzenegger proved that he really is the “Governator” by closing out the legislative session on September 30th with the highest veto percentage of any first-year governor since the California Legislature went full-time in 1967. Of the 1,265 bills the legislature sent to him, he vetoed 311 and signed 954. Notwithstanding this veto zeal, he did sign some important employment-related bills. Set forth below are highlights of the bills by category.

1. Mandatory Sexual Harassment Training

AB 1825 This bill requires all employers of 50 or more employees or independent contractors to provide sexual harassment training to all supervisors during the 2005 calendar year. The training must be repeated every two years thereafter, and all new supervisors must receive the training within six months of assuming a supervisory position. Employers may wait until 2006 if they have already delivered such training to their supervisors any time after January 1, 2003.

Using practical examples, the content of the classroom or other “effective interactive training” must cover harassment prevention, discrimination, retaliation and the remedies available to employees under state and federal law. Additionally, the course must be delivered by trainers with “knowledge and expertise” in the prevention of these subject areas.

As with most laws, many questions are raised by this new law, including:

- Must a company employ 50 employees in the state of California to be covered?
- Who should be considered a supervisor, and what if that person resides outside of California?
- What constitutes “effective interactive training?” For example, can employers use computer-based training, or is live training required?
- Is it sufficient for the training to cover sexual harassment, or must it address broader forms of discrimination as well (e.g., gender-based discrimination)?

We will be exploring these and many other issues in a webcast later this month. You will receive an invitation shortly.

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/asm/ab_1801-1850/ab_1825_bill_20040930_chaptered.pdf

2. Domestic Partner Legislation

AB 205 The California Domestic Partner Rights and Responsibilities Act of 2003 was enacted last year. However, it is important to discuss AB 205 again this year because the new domestic partner law becomes effective on January 1, 2005. AB 205, which amends the California Family Code, generally extends the rights and duties of marriage to registered domestic partners. As of January 1, 2005, registered domestic partners will have many new rights and responsibilities, including community property rights, duties of mutual financial support, and rights and obligations with respect to a child of either domestic partner. However, AB 205 cannot provide registered domestic partners with any of the benefits, protections, or responsibilities provided to opposite-sex couples by federal laws. AB 205 was recently upheld as valid by a Sacramento Superior Court Judge. However, it is expected that the decision will be appealed.

At a minimum, employers should review their domestic partner policies, particularly in light of AB 2208 (see below description). Employers should also review their leave policies (including Family and Medical Care, Paid Family Leave and “Kin Care”) to make sure that such policies reference “domestic partner” wherever such policies reference “spouse.”

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/asm/ab_0201-0250/ab_205_bill_20030922_chaptered.pdf

AB 2208 This bill enacts the California Insurance Equity for All Families Act. The bill conforms to the requirements of AB 205, the existing law extending health care benefits to domestic partners. According to current law, group health care service plans and insurance companies are required to offer health coverage for a registered domestic partner that is equal to the coverage offered to the “dependent” of the employee or subscriber. Current law is *revised* to require group health care service plans and insurance policies to provide a registered domestic partner of an employee or subscriber with health benefits on the same terms and conditions as a “spouse,” instead of a “dependent,” upon application of the employer. AB 2208 applies to group health care service plans or group health insurance policies issued, amended, delivered, or renewed in California on or after January 2, 2005.

In short, if an employer's medical plan offers benefits to employees' spouses and the medical plan is not self-funded, then it is expected that the health care service plan or insurance company will offer such benefits to registered domestic partners on the same terms and conditions as it offers them to spouses. This new law also may apply to employers' life insurance programs for their employees and employees' spouses and domestic partners. It is therefore important to review your health plans, life insurance programs, and domestic partner policies in light of this new legislation.

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/asm/ab_2201-2250/ab_2208_bill_20040913_chaptered.pdf

3. Private Attorney General Act (PAGA)

SB 1809 PAGA was the most draconian employment bill signed by ousted former Governor Davis. Recognizing how destructive PAGA, a.k.a. the “Bounty Hunter Law” or “Sue Your Boss” was to the California business community, Governor Schwarzenegger held up California's budget until revisions were enacted. For more information, please see the August 12, 2004 LawFlash at <http://www.morganlewis.com/pubs/schwarzenegger.pdf>.

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/sen/sb_1801-1850/sb_1809_bill_20040811_chaptered.pdf

4. Employment Records

SB 1465 This bill requires that when a subpoena for documents is sent to a labor union for records related to a current or former member's employment, a notice must be sent to the union member, just as when a subpoena for documents is sent to an employer for records related to a current or former employee's employment, a notice must be sent to the employee.

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/sen/sb_1451-1500/sb_1465_bill_20040706_chaptered.pdf

5. Unemployment Insurance

Governor Schwarzenegger signed a number of bills on the topic of unemployment insurance. A few of note are as follows:

AB 2412 Raises the bar if an employer makes a false statement or representation regarding an employee's unemployment insurance eligibility or willfully fails to report a material fact concerning the termination. This bill authorizes the Employment Development Department (EDD) Director to assess a penalty against the employer in an amount not less than two nor more than ten times the weekly benefit amount of that claimant's compensation. In short, this bill makes it very important that employers handle the EDD's inquiries delicately so as not to incur this extra liability.

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/asm/ab_2401-2450/ab_2412_bill_20040927_chaptered.pdf

AB 2028 Further clarifies that payments received from an employer pursuant to the Workers Adjustment and Retraining Notification Act (WARN) and Cal-WARN may *not* be construed as wages or compensation for purposes of determining eligibility for unemployment compensation benefits. Accordingly, an employee can “double-dip” and the employer's reserve account will be charged. This bill is another reason for employers covered by the WARN acts to consider whether “working notice” is feasible and not too disruptive.

For detailed information, please click on the following link:

http://www.leginfo.ca.gov/pub/bill/asm/ab_2001-2050/ab_2028_bill_20040925_chaptered.pdf

6. Workers' Compensation

As described in the May 4, 2004 LawFlash, Governor Schwarzenegger signed **SB 899**, which provides strong reforms to the California Workers' Compensation System in an effort to save jobs, reduce costs for employers and improve care for injured workers.

Most sections of SB 899 became effective on April 19, 2004, the date it was signed into law by Governor Schwarzenegger. Some sections will become effective later, on dates specified in the bill, and some sections are retroactive. Many provisions require that the Division of Workers' Compensation DWC adopt implementing regulations. Information on new or revised regulations will be posted on the DWC web site (<http://www.dir.ca.gov/dwc>) throughout the rulemaking process, including emergency

regulations that will allow medical provider networks to begin operating in California. Medical provider networks, which were authorized by SB 899, may be established by employers or insurers on or after January 1, 2005. For more information, please see the LawFlash at http://www.morganlewis.com/pubs/EA62E23E-A707-418F-B0E6BD6AB0647B38_Publication.pdf.

For detailed information, please click on the following link:
http://www.leginfo.ca.gov/pub/bill/sen/sb_0851-0900/sb_899_bill_20040419_chaptered.pdf.

7. Whistleblower Poster

AB 1127 This bill clarifies that “14 pica” means “14 point” and the poster must be in at least size 14-point type. Our “model” poster is in compliance - we used 15-point type. For more information, please see the January 12, 2004 LawFlash at http://www.morganlewis.com/pubs/F1D67C12-8C71-45C8-BC59CB851317653E_Publication.pdf.

For detailed information, please click on the following link:
http://www.leginfo.ca.gov/pub/bill/asm/ab_1101-1150/ab_1127_bill_20040927_chaptered.pdf.

8. Discrimination

AB 2870 The bill's provision explicitly authorizing the Department of Fair Employment and Housing Commission (DFEH) to conduct mediations is a positive development. The Equal Employment Opportunity Commission has been doing this for some time, but the DFEH has been more informal in encouraging early resolution.

For detailed information, please click on the following link:
http://www.leginfo.ca.gov/pub/bill/asm/ab_2851-2900/ab_2870_bill_20040921_chaptered.pdf.

9. Bills of Interest That Were Vetoed

(a) Anti-Offshoring

Siding with the California Chamber of Commerce over labor advocates, the Governor rejected anti-offshoring bills. The vetoed measures would have prohibited shipping homeland security work overseas (**SB 888**); required state contractors to verify that work is done in the United States (**AB 1829**); and imposed penalties for transmitting a patient's personal health information outside the United States (**SB 1492**).

(b) Wage and Hour

AB 2832 This bill would have raised California's minimum wage by \$1.00 to \$7.75. The California Chamber estimates that if Governor Schwarzenegger had signed AB 2832, employers' costs would have increased by at least \$2.08 billion annually, raising costs for consumers and driving employers to other states.

AB 3018 and SB 1538 The Governor vetoed these two bills that would have made changes to California's rigid rest and meal period law. In his veto message, the Governor directed the applicable California agency to prepare regulations to resolve confusion in this law.

AB 2317 This bill would have increased the damages an employee may obtain if successful in bringing an “equal pay” claim against an employer. Considering the fine was already doubled last year, this would have been a huge potential burden for employers.

For more information about these issues, please contact your Morgan Lewis attorney, or one of the contacts listed below:

Los Angeles

John S. Battenfeld 213.612.1018 jbattenfeld@morganlewis.com

Palo Alto

Carol R. Freeman 650.843.7520 cfreeman@morganlewis.com

San Francisco

Rebecca Eisen 415.442.1328 reisen@morganlewis.com

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