2006 Labor Law Update

LEGISLATIVE AND REGULATORY CHANGES AND IMPORTANT COURT DECISIONS during 2005 made significant changes for employers. Here is a summary of some of the most important ones you need to know to prepare for this year.

During 2005 and on January 1, 2006, new rules are in effect in the following areas:

LAWS REGULATIONS & DECISIONS:

- AB 1825 — The 2 Hour Sexual Harassment Prevention Training Requirement. Release of new proposed regulations clarifying the modifications to rules.
- Final wages may be paid by direct deposit to an employee's previously authorized account, provided that all other requirements for payment of final compensation are met.
- New federal law requires proper destruction of documents that contain personal information of the type obtained in credit reports.
- Social Security and Identity Theft — SB101 – Last four numbers of SS# only and not as employee identification numbers.
- Meal Period Regulations — No new rules, but court decided that payment is penalty not wages.
- Cal/OSHA Standard on Heat Illness Prevention. New safety guidelines for employees working outdoors who may be at risk for developing heat illness.
- The period for filing discrimination claims by minors under the Fair Employment and Housing Act (FEHA) is extended to one year from the minor's eighteenth birthday.

WORKERS COMP:

- Care for injured workers by medical provider networks;
- Injured workers seeking independent medical review of diagnosis and treatment recommendations of physicians within a medical provider network;
- Permanent disability rating schedule;
- Supplemental Job Displacement Voucher program for injured workers with permanent disabilities;
- **"Reasonable Business Necessity"** defense for § 132a Labor Law cases.

HARASSMENT:

- Rude or aggressive supervisory conduct directed at one sex more frequently than another constitutes sexual harassment, as does conduct favoring employees who engage in sexual conduct with a supervisor.
- Workplace Romances Can Lead to Sexual Favoritism Claims, *Miller v. Department of Corrections.*
- Employee who refuses to carry out an order he or she reasonably believes to be discriminatory is protected from retaliation even if he or she never advises her employer of that belief — *Yanowitz v. L'Oreal USA, Inc.*

MISCELLANEOUS:

- **Warn Act Decision** — In the first published case interpreting the meaning of "mass layoff" under the California Worker Adjustment and Retraining Notification Act ("California WARN," Cal. Lab. Code §1400 et. seq.), a California Court of Appeal provided some much needed guidance and good news to employers regarding their obligations under the statute.
- Pre-Employment Medical Inquiries must be performed after a conditional offer of employment is made to employee, *Leonel v. American Airlines,* 9th Circuit.
- **Pre-Hire Personalilty Tests** are Medical Exams [see above].
- Failing to train managers involved in the hiring process as to when and how to make employment offers, or how to refrain from making unintended verbal offers or misstatements that can result in significant company liability.
- An **employer may lawfully discharge an employee for using federally prohibited drugs** even if use is protected by state criminal law.
- **Workplace Violence Safety Act is Improved** - Responding officer can give verbal TRO. Employer can mail copy in one day.
- A California court **shifted to employers the burden of proving** that an employee or applicant is not qualified to work because of a disability in a claim filed under FEHA.
- The Age Discrimination in Employment Act (ADEA) permits lawsuits based solely on **differential impact on older workers** without the need to prove intent to discriminate.
- A California employer may **deduct unearned commissions** from future compensation advances without violating the California Labor Code.
- Corporate agents and managers acting within the scope of their agency are not personally liable under California law for their corporate employer's failure to pay its employees' wages.
- California law permits an employer to replace salary on an **exempt employee's partial day off** with time charged against the employee's vacation or PTO bank, provided the employee has such time available.
- **Court Approves 12-Hour Alternative Workweek** — Employees at the Yoplait division of General Mills agreed to a 12-12-12-6 AWS. Yoplait paid overtime for the final two hours in each 12-hour shift but not for the 9th and 10th hours. An employee filed a complaint with the Labor Commissioner alleging that the Labor Code only permits an AWS of four 10-hour shifts per week. The Labor Commissioner agreed, and awarded him unpaid overtime and interest. Yoplait filed a request under Labor Code Section 98.2 for a trial "de novo" in the Superior Court. This procedure permits the court to take a fresh look at the case rather than require the appealing party to prove the Labor Commissioner's decision was wrong.
- **Pay For Changing Into Work Clothes** — According to a new ruling of the U.S. Supreme Court in two consolidated cases, federal law requires employers to pay employees for the time they spend changing in and out of protective clothing or safety gear and the time spent walking between their work locations and the place where they change. In addition, time spent waiting to remove the protective clothing or gear must be paid as well.
- **CA Gives Greater Minimum Wage Protections** — No averaging to meet minimum wage. Okay federal but not California.
- **Even With A Reasonable Accommodation** of a two year leave of absence, failing to engage in perfect interactive process can be basis for lawsuit, *Claudio v. Regents of University of California.*
- Arbitration agreements before dispute not enforceable.
- Domestic Partner Rights — If registered, treat them as almost married.