

Paul Plevin & Sullivan LLP

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Recent
Developments

NEW DEVELOPMENTS REGARDING EMPLOYEE STOCK OPTIONS AND POSSIBLE UNEMPLOYMENT BENEFITS FOR NEW PARENTS (May 12, 2000)

A. Congress Acts to Protect Stock Option Benefits for Non-Exempt Employees.

In a recent [E-Update](#), we discussed the Department of Labor's (DOL) opinion letter that required employers to include an employee's stock option profits when calculating a non-exempt employee's "regular rate of pay." (The regular rate of pay is the legally required formula used to calculate an employee's overtime pay rate.) Fortunately, on March 8, 2000, Congress responded by unanimously passing the "[Worker Economic Opportunity Act](#)," which has now been forwarded to President Clinton for his signature. President Clinton is expected to sign the bill into law very soon. Once signed into law, the Fair Labor Standards Act (FLSA) will be amended to specifically *exclude* stock option profits from an employee's regular rate of pay.

What this Means: The new law protects employers from additional overtime liability because the profits non-exempt employees receive from stock options need not be considered. Importantly, the law also makes this protection retroactive. This amendment to the FLSA will allow employers to continue to make stock options available to their non-exempt employees without the fear of big overtime liabilities down the road.

B. Labor Department Poises to Issue Final Regulations Allowing New Parents to Collect Unemployment Benefits

President Clinton recently directed the Secretary of Labor to propose [regulations](#) that would allow states to use their unemployment insurance system to financially support new parents following the birth or adoption of a child. States choosing to do so would be able to use unemployment insurance funds to provide benefits to new parents who otherwise lack paid leave coverage for the birth or adoption of a child.

Employer groups have strongly criticized this "experimental program" because of its potential impact on the amount of leave taken by employees. Once the rules are finalized (which should be very soon), states will be permitted to exercise considerable discretion in deciding whether, and under what circumstances, to adopt such a system.

The DOL intends to use the data obtained during the first several years of its experimental program to determine whether coverage should be expanded even further.

What this Means: If the DOL's regulations are made final, nothing will actually be *required* of the states. California could decide not to use the unemployment insurance system to support new parents. However, with California's current budget surplus and notoriously employee-friendly legislature, we believe that California could well implement just such a program. This would mean that the state would be required to provide benefits not only to employees on approved leave, but also to employees who

decide *not* to return to work following the birth or adoption of a child. This could substantially increase employees' use of family leave and create a significant hardship on employers. It could also encourage employees not to return from family leave at all.

If this issue is of importance to you, we encourage you to offer your input before it's too late. Written comments should be directed to: Grace A. Kilbane, Director, Unemployment Insurance Service, Employment and Training Administration (ETA) U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, D.C. 20210. You may also contact the offices of Senators [Barbara Boxer](#) and [Dianne Feinstein](#).

If you have any questions about these or any other related topics, you may contact either Keith Rummer (krummer@paulplevin.com), or Michael Sullivan (msullivan@paulplevin.com) at Paul Plevin & Sullivan (619-237-5200).

This E-Update is offered as general information to our clients and friends. The Update is not intended as legal advice applicable to any specific situation and should not be taken as such.

Send comments to info@paulplevin.com. Last modified 05/12/00