

Paul Plevin & Sullivan LLP

Serving California Employers

Recent
Developments

PENDING BILLS WOULD IMPACT WORKPLACE (September 13, 2000)

Last week, as the California Legislature wound down the current session, a flurry of bills made it to Governor Davis' desk for his signature or veto. Three of these bills, Assembly Bill 1856 and Senate Bills 55 and 1327 would change the current law for employers. As of today, these bills remain on the Governor's desk.

- **Co-Worker Liability for Sexual Harassment**

Earlier this year, the California Supreme Court announced, in a unanimous decision, that although the Fair Employment and Housing Act (FEHA) prohibits "any person" from harassing another employee, a non-supervisory co-worker cannot be sued under FEHA. One bill awaiting the Governor's signature (AB 1856) would undo that decision. AB 1856 expressly provides that *any employee* of any entity covered by the FEHA may be *personally liable* for prohibited harassment.

- **Inspection of Personnel Files for Public Employers**

The second proposed bill is SB 1327. This bill would revise Section 1198.5 of the Labor Code, relating to the inspection of personnel files. Currently, the law requires employers to make employee personnel files available for inspection by employees, and prescribes procedures for that inspection. However, the current law exempts public employers from this requirement. SB 1327 would apply Section 1198.5 to *all* employers.

The bill would also prohibit public school districts or community college districts from entering derogatory information into an employee's personnel records unless the employee is first given an opportunity to review and comment on that information.

- **Overtime Compensation**

The third bill awaiting the Governor's signature is SB 88. This bill has three main provisions:

1. It would exempt professional employees in the computer software field from overtime compensation requirements if they are primarily engaged in work that is intellectual or creative, their hourly rate of pay is not less than \$41.00, and they meet other less significant requirements.
2. It would require that employees who perform executive, administrative or professional jobs "*regularly exercise discretion and independent judgment*" in performing these duties in order to be exempt from California overtime requirements.
3. It would provide that certified nurse midwives, certified nurse anesthetists, and certified nurse

practitioners who are primarily engaged in performing duties for which their respective certification is required are exempt from overtime requirements.

If signed by the Governor, SB 88 would take immediate effect as an urgency measure.

What this Means: If SB 88 is signed by Governor Davis, California will have an exemption for computer software professionals that is similar to the federal exemption. However, the salary requirement under the California exemption is substantially higher than under federal law. In addition, the executive, administrative and professional exempt classifications will also be further narrowed by SB 88. As a result, employers should review the duties and responsibilities of their current exempt employees and ensure that they are regularly "*exercising discretion and independent judgment*" in performing their job duties.

If any of these three bills are important to you, we recommend that you contact Governor Davis and express your opinion on whether he should or should not sign these pending bills into law. The Governor's contact information is: Governor Gray Davis, State Capitol Building, Sacramento, CA 95814, Phone: (916) 445-2841, Fax: (916) 445-4633, graydavis@governor.ca.gov

- **REMINDER - SAVE THE DATE: On Wednesday, October 18, 2000, between 8:00 a.m. and noon, our firm will present "Getting Ready for 2001: What You Need to Know" at the Hilton La Jolla Torrey Pines. Enrollment is \$50. To ensure a seat, please email seminars@paulplevin.com.**

If you have any questions about this or any other topic, please contact Leonid M. Zilberman (lzilberman@paulplevin.com) or at (619) 744-3648 at Paul Plevin & Sullivan.

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 09/19/00