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**GOVERNOR DAVIS SIGNS TWO NEW BILLS AFFECTING
CALIFORNIA EMPLOYERS
(September 24, 2002)**

Senate Bill 1661—Family Temporary Disability Insurance

Summary:

Yesterday, Governor Davis signed [Senate Bill 1661](#), which provides up to six weeks of family temporary disability insurance benefits in a 12-month period for those employees who take leave to care for a sick child, spouse, parent or domestic partner with a serious health condition, or to bond with a new child. The program will be administered through the state's unemployment compensation disability insurance program and will be funded solely through mandatory employee contributions. Although the law takes effect on January 1, 2004, only employees taking leave commencing on or after July 1, 2004, will become eligible for these benefits.

Details:

This new program does not require any employer contributions. All employees who are unable to perform their regular duties because of the need to care for a child, spouse, parent or domestic partner will be entitled to benefits. Payments are capped at six weeks over a 12-month period and at 55 percent of wages, up to an annually-adjusted maximum. Initially, the maximum weekly payment employees can receive during their leave is \$728.00. For workers earning more than \$72,000 per year, the maximum annual payroll deduction is \$70.00.

The law includes some important limitations.

- There is a seven-day waiting period before an employee may qualify to receive benefits;
- The employee must provide a medical certification;
- An employee is not eligible for benefits if he or she is receiving other unemployment or disability benefits;
- An employee is not eligible for benefits for any day that another family member is able and available to care for the ill or injured

family member; and

- All employers may mandate that an employee utilize up to two weeks' of earned but unused vacation leave prior to receiving any benefits under this program.

Employers should note that this new program does not provide a right to family or medical leave or any job protection for employees qualifying for benefits. Employees' leave rights continue to be governed by existing state and federal family and medical leave laws (i.e., FMLA and CFRA). Therefore, employers who are not subject to existing family and medical leave laws are not required by the law to grant employees time off.

What This Means:

Like regular disability insurance contributions, employers will be responsible for processing employee contributions under this new temporary family disability program. Additionally, employers will most likely be faced with more employees seeking leave and for longer periods of time, and may have increased costs associated with hiring and training temporary replacement employees. This could create difficult situations for some employers, particularly those who depend on continuity in a small workforce. Thus, this new law will likely have a substantial impact on many employers.

Assembly Bill 2957 –Notice of Mass Layoff, Relocation and Termination

Summary:

On September 21, 2002, Governor Davis signed [Assembly Bill 2957](#), California's own version of the WARN Act. This new law requires covered employers to provide 60 days written notice of any mass layoff, relocation, or termination of industrial or commercial operations to all affected employees, the Employment Development Department, the local workforce investment board, and the chief elected official of each city and county affected by the event. Employers that fail to provide the required notice may be liable for back pay, benefits, penalties, attorneys' fees and court costs. This law takes effect on January 1, 2003.

Details:

Since 1988, the federal Worker Adjustment and Retraining Notification Act, known as the WARN Act, has required employers with 100 or more employees to provide written notice 60 days in advance of any covered "plant closing" or "mass layoff." The new California law generally tracks the WARN Act, but has a number of significant differences.

- The new law applies to any industrial or commercial facility that employs, or has employed, 75 or more persons within the 12 months preceding the layoff. By contrast, the WARN Act only covers employers with 100 or more "full-time employees" as specifically defined in WARN.
- Under the new law, notice of a layoff is required whenever an employer lays off 50 or more employees at single work site. Under the WARN Act, notice of a layoff is only required if the layoff of 50 or more affects more

than one-third of the employees at the single work site.

- In determining both coverage by the law and whether a covered event has occurred, the California law does not exclude employees with part-time schedules, whereas the WARN Act excludes workers who work less than 20 hours per week. Both laws exclude workers employed for fewer than six of the 12 months preceding the time in which notice is required.

Information required in the California notice is the same as that required by the WARN Act. Like the WARN Act, the new state law also provides for aggregating separate layoffs occurring within any 30-day period. Finally, like the WARN Act, the new law provides only very limited exceptions, and provides for damages plus attorneys' fees awards to employees who are not provided with the required notice.

What This Means:

This new California law will affect more employers and more layoffs than those already covered under the WARN Act, and thus, may be unfamiliar territory for many. There are also subtle differences now between state and federal law which will require a careful analysis of any contemplated workforce reduction. Because proper notice is critical to avoid costly violations, it will be important to seek legal advice in advance of planning a layoff, relocation, or termination.

Are More New Laws On the Way?

Other bills have cleared the legislature and are awaiting the Governor's signature. These include:

- AB 1068 will clarify and change, in a positive way, last year's controversial amendments to the California Investigative Consumer Credit Reporting Act (the so-called "background check" law).
- SB 1538 will invalidate pre-dispute arbitration agreements in employment contracts, and would make it an unlawful employment practice for an employer to require an employee to waive rights and procedures under FEHA as a condition of employment.
- AB 1599 will expand the age discrimination provisions of the California Fair Employment and Housing Act to apply to employee training and benefits programs.
- AB 2989 will create mandatory severance pay to qualified employees when an employer relocates or closes certain facilities or lays off employees from those facilities.
- SB 783 and SB 1452 will expand coverage under the state whistleblower law.
- SB1471 will provide that any employer policy that counts sick leave used to attend to an illness of a child, parent, spouse, or domestic partner as a basis for discipline is a *per se* violation of California law.

It is not clear which of these additional bills will be signed by Governor Davis. What is clear, however, is that this past legislative session has resulted in several bills which, if signed into law, will have a significant impact on California employers. If and when these or other bills are signed, PPS&C will keep you

informed of these developments, as well as any other developments affecting California employers. In addition, all new laws affecting California employers will be reviewed in our annual Employment Law Update on **November 7, 2002**. More information on this seminar is contained below.

This E-Update was authored by [Connie Lundgren](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney.

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.

SAVE THE DATE! SAVE THE DATE! SAVE THE DATE!

Workplace Law 2003

Paul, Plevin, Sullivan & Connaughton LLP Annual Employment Law Update

Are you Up-to-date?

Wrongful termination – Discrimination – Reasonable Accommodation

Whistleblowing – Leaves of Absence – New Privacy Guidelines

Trade Secrets – 9/11 Impact on Business Immigration Laws

Sexual Misconduct – Religious Harassment – Arbitration

If any of these challenges surface, are you ready to handle them?

Come join us for an interactive workshop that will focus on how new laws, initiatives and court decisions will impact your company's day-to-day employment practices and what you need to do to get ready for 2003.

Events of the past 12 months have changed the way we live and work in America. This seminar is designed to assist general counsel, human resources executives, risk managers, and executive officers with oversight responsibilities for human resources in dealing with changes in employment laws and practices. Our firm's employment law experts will arm you with practical advice and strategies for understanding and managing your employees. We will provide specific information on:

- Ethical considerations and workplace issues in the post-Enron world. Avoiding allegations of whistleblowing, retaliation, and the effect of recently enacted federal legislation creating a new federal wrongful termination cause of action for retaliation. We will examine how ethical considerations, new laws and other court decisions impact the workplace, what employers are prohibited from doing and provide practical suggestions for defending against such suits.

- Special Report on Immigration Laws in the Post-September 11th World. Peter Larrabee, a nationally known San Diego immigration attorney with over 23 years of experience, will discuss the fallout and future of immigration law in the workplace and the things employers need to know to be ready for 2003.
- What you need to know when conducting a background check or investigation of employee conduct. We will describe the new challenges created by AB 655 regarding the California Investigative Consumer Reporting Agencies Act and also discuss the Do's and Don'ts of conducting investigations and how to effectively use investigations to defend against litigation.
- All new laws affecting California employers. This year's legislative session has resulted in several bills being sent to Governor Davis for signature. Our seminar is timed to occur just after the Governor's deadline for signing bills into law, some of which take effect immediately.

WHEN: November 7, 2002, 8:00 a.m. - 12:00 p.m.

WHERE: San Diego Marriott Del Mar
11966 El Camino Real
San Diego, CA 92130
Registration and Continental Breakfast: 8:00-8:30 a.m.
Seminar: 8:30-12:00 p.m.

REGISTER: Either register [online](#) or by phone ((619) 237-5200). Advance registration is strongly suggested because seating is limited.

COST: \$125.00 includes breakfast, seminar materials and parking and can be paid in advance or at the door.

3.0 hours of MCLE credit available.