

PAS Associates

2008 Employment Law Update

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A. Summary of Bills

1. AB 338 Workers' Compensation Temporary Disability Payments.

With limited exceptions, existing law prohibits aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability from extending for more than 104 compensable weeks within a period of 2 years from the date of commencement of temporary disability payment. This bill would, for a single injury occurring on or after January 1, 2008, increase to 5 years from the date of injury, the period of time during which an employee can receive aggregate disability payments.

2. AB 392 Unpaid Leave for Spouses of Qualified Member of Armed Forces

This bill was signed by Governor Schwarzenegger and became effective on October 9, 2007. The new statute applies to all qualified employers. A qualified employer is defined as any individual, corporation, company, firm, state, city, county, city and county, municipal corporation, district, public authority, or any other governmental subdivision, that employs 25 or more employees. Under this new law a qualified employee may take up to ten (10) days of unpaid leave if certain circumstances exist. A qualified employee is defined as an individual who satisfies all of the following:

- (A) Is the spouse of a qualified member.
- (B) Performs service for hire for an employer for an average of 20 or more hours per week, but does not include an independent contractor.
- (C) Provides the qualified employer with notice, within two business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take the leave provided for in this statute.
- (D) Submits written documentation to the qualified employer certifying that the qualified member will be on leave from deployment during the time the leave is requested.

A qualified member is a person who is any of the following:

- (A) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States.
- (B) A member of the National Guard who has been deployed during a

period of military conflict.

(C) A member of the Reserves who has been deployed during a period of military conflict.

The law prohibits an employer from retaliating against a qualified employee for requesting or taking the type of leave allowed under the statute.

3. **AB 632 Health Care Whistleblower Protection**

This new law is effective January 1, 2008. This statute prohibits a health care facility from discriminating or retaliation against a patient, employee or medical staff person because the individual 1) presented a grievance or complaint to the facility, an accrediting agency or other governmental agency or 2) initiated, participated, or cooperated in the investigation or administrative proceeding related to the quality of care, services or condition of a facility. A violation of this section shall be subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000). Any type of discriminatory treatment of a patient by whom, or upon whose behalf, a grievance or complaint has been submitted, directly or indirectly, to a governmental entity or received by a health facility administrator within 180 days of the filing of the grievance or complaint, shall raise a rebuttable presumption that the action was taken by the health facility in retaliation for the filing of the grievance or complaint.

4. **AB 650 Earned Income Tax Credit Notice**

Governor Schwarzenegger signed a new notice requirement into law that became effective January 1, 2008. With AB 650, employers must provide notice to all employees about the federal earned income tax credit. The motivation for the California legislature creating the bill appears to be a recognition that certain eligible citizens of California were not taking advantage of a federal tax benefit. The federal income tax laws authorize a refundable earned income tax credit (EITC) for certain low-income individuals who have earned income and who meet certain other requirements. According to the authors of the bill, the result eligible persons not using the tax benefit is that hundreds of millions of federal dollars go unclaimed by the working poor in California.

A.B. 650 requires employers to notify all employees that they may be eligible for the federal earned income tax credit. Any employer who is subject to, and is required to provide, unemployment insurance to his or her employees, under the Unemployment Insurance Code is covered by the new law. All employees who are covered by unemployment insurance by his or her employer, pursuant to the Unemployment Insurance Code, must receive the notice.

Employers must notify all employees that they may be eligible for the EITC within one week before or after, or at the same time, that the employer provides an annual wage

summary, including, but not limited to, a Form W-2 or a Form 1099, to any employee. A.B. 650 requires that the employer provide the notification by handing directly to the employee or mailing to the employee's last known address either of the following:

(1) Instructions on how to obtain any notices available from the Internal Revenue Service for this purpose, including, but not limited to, the IRS Notice 797 and Form W-5, or any successor notice or form.

(2) Any notice created by the employer, as long as it contains substantially the same language as the notice described below or in subdivision (a) of Section 19854.

An employer cannot satisfy the notification requirement by posting a notice on an employee bulletin board or sending it through office mail. However, these methods of notification are encouraged to help inform all employees of the EITC. The statute also states that every employer shall process, in accordance with federal law, Form W-5 for advance payments of the EITC, upon the request of the employee.

5. **AB 1835 Increase in Minimum Wage**

California's minimum wage increased on January 1, 2008 to \$8.00 per hour. When the minimum wage increases, employers must consider other changes that are tied to California's minimum wage. Those persons who are classified as exempt from earning overtime compensation under the Administrative, Executive and Professional exemptions must be paid a salary of at least two times minimum wage in order to maintain tier exempt status. Other requirements also exist in order to be properly classified as exempt. The minimum salary as of January 1, 2008 is now \$33,280.00 per year or \$2773.00 per month. Also, employees who are allowed or required to use their own personal hand tools at work must be paid two times minimum wage which is not \$16.00 per hour. (In addition Federal minimum wage, which is currently \$5.85 per hour will increase to \$6.55 per hour effective July 24, 2008.)

6. **SB 812 Alternative Workweek Schedules for Pharmacists.**

Pharmacists, depending on the nature of their work, may be regulated by either Wage Order 7 or Wage Order 4. Although both wage orders permit the adoption of alternative workweek schedules by agreement for those employees performing work in those industries, Wage Order 7 requires that any such agreement provide not less than 2 consecutive days off within a workweek, whereas, Wage Order 4 has no such restriction. This bill provides that pharmacists engaged in the practice of pharmacy who are employed in the mercantile industry, pursuant to Wage Order 7, shall be permitted to adopt alternative workweek schedules allowed by Wage Order 4, including alternative workweeks that can be adopted by employees working in the health care industry.

7. **SB 101 Use of Social Security Number as Identification**

In the year 2005, the California legislature passed a law with an effective date of January 1, 2008. Pursuant to SB 101, effective January 1, 2008, an employer can only use the last four digits of an employee's social security number as an ID number on the employee's pay stub. The employer may elect to use some other form of identification other than one that is related to the social security number.

8. **SB 929 Computer Professional Exemption**

Existing law establishes an exemption from overtime compensation for employees who meet the requirements of the computer professional exemption. Current law requires that the employee perform certain types of high level computer work in order to be exempt. Those requirements can be found in the Labor Code and have not changed. In addition to performing the type of work described in the Labor Code, the individual must be paid a certain amount hourly rate of pay. SB 929 lowered the hourly rate. Effective January 1, 2008, the hourly rate is \$36.00. That rate will be re-evaluated every year.

9. **Exemption for Physicians**

Each year the Department of Industrial Relations evaluates the minimum hourly rate that may be paid to physicians in order for the physicians to remain exempt. The rate for 2008 will be \$65.59 per hour. Of course, some physicians are paid a salary and are exempt under the Professional exemption.

B. Other Changes of Note

1. Beginning in 2008, employers must use a new I-9 form and a new W-4 form.
2. Beginning January 1, 2008, the recommended IRS mileage reimbursement rate will increase to 50.5 cents per mile.