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California Governor Arnold Schwarzenegger signs only a handful of bills impacting employers in California.

## California Edition

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### Mostly Quiet on the Sacramento Front: *The Results of the California Legislature's 2005 Session*

By Christopher E. Cobey and Cathy S. Beyda

The 2005 session of the Democratically-controlled California legislature ended in early September. Republican Governor Arnold Schwarzenegger, in his second full year in office, signed and vetoed the Legislature's products through the first week in October. The resulting new laws affecting California private employers were largely anticlimactic, compared to the legislative production earlier this decade when a single party controlled both the Legislature and the Governor's office.

In contrast to last year's large number of bills passed (1,241), this year's legislative production was lower in the overall number of bills passed by the Legislature (961); while the proportion of bills vetoed by the Governor (24%) was about the same as last year (25%). The Governor's actions in signing and vetoing bills were generally consonant with the interests of business groups, and less favorable towards the interests of public and private-sector labor unions.

For California private-sector employers, there were no earth-shaking new laws as part of the 2005 legislative product. The Governor's major policy initiatives for 2005 are on the November special election ballot. To be decided at that election, along with four other measures, will be the Governor's four reform proposals concerning public school teacher tenure (Proposition 74), political expenditures by public employee unions (Proposition 75), state spending and school funding limits (Proposition 76), and legislative redistricting (Proposition 77).

The most noteworthy measures for private employers signed into law in 2005 were:

- **Use of Social Security numbers (SSNs)** (S.B. 101; effective July 21, 2005): Existing law requires employers, by January 1, 2008, to include no more than the last four digits of an employee's SSN or an existing employee identification number on employee checks, drafts or vouchers. S.B. 101 clarifies existing law in two ways. First,

the bill removes the word "existing" as it relates to employee identification numbers, making clear that employers may establish new employee identification numbers to implement the provisions of the legislation. Second, the bill amends the language permitting employers to place the last four digits of a SSN or an employee identification number on the paycheck by instead clarifying that the last four digits of the SSN or an employee identification number may be shown on the itemized statement provided to the employee along with his or her check, draft or voucher.

- **Direct deposit of final wages; payment of exempt computer software employee** (A.B. 1093):

(1) Permits employers to pay an employee's final wages by direct deposit provided the employee has authorized this method of wage payment, and the employer complies with other Labor Codes provisions that regulate the payment of final wages (e.g., Labor Code §201). Because the Labor Commissioner considers payment by debit card to be a form of direct deposit, this bill creates the possibility that final wages may now be paid by payroll debit card. Employers should remember, however, that the California Labor Commissioner requires employers to comply with other conditions before paying their employees using a debit card. In addition, neither the legislature nor the California courts have addressed whether payment by debit card is a permissible form of wage payment. Paying final wages to employees either by direct deposit or on a payroll debit card are now viable options to employers who have employees in California.

(2) Amends section 515.5 to provide that a computer software employee may qualify for the overtime exemption if he

or she is paid at least \$41 an hour or the annualized full-time salary equivalent to that rate, provided that for each workweek the employee receives not less than \$41 per hour worked and all of the other requirements for the exemption are satisfied. Although the legislation refers to a rate of “\$41 per hour,” that reference is to the hourly rate specified in Section 515.5 when first enacted in 2000, and not to the rate subsequently revised as required by Section 515.5(a)(3). The 2006 rate for this statute has been set at \$47.81 per hour.

- **Extension of DFEH complaint filing period for minor employees** (A.B. 1669): Extends the period for filing a complaint with the California Department of Fair Employment and Housing for an unlawful practice for a period of time not to exceed one year from the date a person allegedly aggrieved by an unlawful practice attains the age of majority.
- **Service of Labor Commissioner pleadings** (A.B. 1311): Permits the service of a Labor Commissioner’s complaint, notice, or decision relating to a labor hearing to be served by leaving a copy at the home or office of the person being served, and thereafter mailing a copy to the person at the place where a copy was left. The bill was passed in response to complaints that certain employers were avoiding personal service of Labor Commissioner pleadings, and would refuse to sign for such pleadings sent by certified mail.

Some of other measures that affect less than all private California employers were:

- **Jockeys** (A.B. 1180): Establishes wage payment rates, mount fees, and exercise fees of jockeys exercising racehorses.
- **Meal periods in motion picture and broadcasting industries** (A.B. 1734): Exempts from the Labor Code meal period requirement certain employees in the motion picture and broadcasting industries who are covered by a valid collective bargaining agreement that contains specified terms.
- **Residency of “key employee” under Gambling Control Act** (A.B. 1753): Deletes California residency requirement key employee license applicants.
- **Radiation technology** (A.B. 929): Requires the state to adopt regulations that require personnel and facilities using radiation-producing equipment for medical and dental purposes to maintain and implement medical and dental quality

assurance standards for the protection of the public health and safety.

- **Training of certified nurse assistants** (A.B. 1235): Allows an applicant seeking renewal of certification as a certified nurse assistant to complete 24 of the requisite 48 hours of training using an online computer training program, approved by the appropriate state agency, which program meets prescribed requirements, including a requirement that the person certify completion of the course.
- **Talent agencies** (S.B. 184): Requires talent agencies to deposit a surety bond in the amount of \$50,000, instead of \$10,000. Bill supporters said that the increase in the amount of the required bond was needed to ensure wage payments by the agencies.

In addition to the abovementioned legislation, the Governor also signed a legislative resolution which does not require employers to take action, but “urges” them to do so. S.C.R. 25 urges employers to ensure that their injury prevention programs and other systems for identifying and correcting workplace hazards consider the effects of ultraviolet radiation, and ensure that skin cancer prevention policies for outdoor workers are put into operation.

The Governor’s decision to veto a particular piece of legislation provides insight into his political and policy attitudes. Among the more significant vetoes this year were:

- **Increase in the minimum wage** (A.B. 48): This bill would have increased the minimum wage to \$7.25 per hour, effective on and after July 1, 2006, and to \$7.75 per hour, effective on and after July 1, 2007, and would have provided for the automatic adjustment of the minimum wage on January 1 of each year thereafter, calculated by multiplying the minimum wage by the previous year’s rate of inflation, as specified. In his veto message, the Governor stated that he believed that the minimum wage should in fact be increased, but that the “autopilot” increase in this bill was inappropriate, and thus made the entire bill unacceptable to him.
- **Gender pay equity** (A.B. 169): This bill would have increased the damages an aggrieved employee could obtain if the employee was successful in bringing a civil action against an employer who has violated existing law to include a specified civil penalty, and would have mandated the types of damages employees could recover if successful in bringing a civil action against their employer for willful

violations of existing law.

- **Pay rate for meal or rest periods for piece-rate agricultural and garment workers** (A.B. 755): This bill would have required employers to pay employees for any rest period mandated by statute, regulation, or order of the Industrial Wage Commission, and would have provided that the rate of pay for the rest periods of piece-rate workers in the agricultural and garment industries would be the average piece-rate wage, defined and limited as specified.
- **“Gay marriage”** (A.B. 849): Existing law provides that marriage is a personal relation arising out of a civil contract between a man and a woman. This bill would have instead provided that marriage is a personal relation arising out of a civil contract between two persons.

As a result of the foregoing legislative activity, employers are advised to:

- Review employee handbooks and policies which could be affected by legislation which has become law.
- Incorporate any employee handbook or policy changes into supervisor training which is being conducted, especially that required by California Government Code section 12950.1 (sexual harassment). Keep in mind that, for any supervisor hired or promoted to such a position on or after July 1, the required training must be completed by January 1, 2006.

Looking forward to the 2006 California legislative session, employers can expect the relationship between the Democratic legislature and the Republican governor to remain partisan and adversarial, as both entities gear up for the statewide general election in November 2006. As such, if the parties continued to perform as they have over the last year; no major employment legislation — except perhaps an increase in the minimum wage — is likely to come out of Sacramento in 2006.

(All California laws and legislation may be accessed at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).)

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