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Despite Spending Much of the Summer Fighting for His Political Life, Soon-to-Be Ex Governor Gray Davis Signed or Approved 909 of the 968 Legislative Measures on His Desk. Many of These Bills Directly Affect Employers in California and Create New Areas of Liability and Increased Penalties. The Highlights of These New Laws Are Included Here.

2003 CALIFORNIA LEGISLATIVE UPDATE

WHAT?! You're Still Doing Business in California?!

By Christopher E. Cobey, Kevin Lilly, Susan Woodhouse, and Jill Fukunaga

Once again in 2003, the California legislature and soon-to-be-former Governor Gray Davis reaffirmed the wisdom of a New York court writing 137 years ago...

"No man's life, liberty or property are safe while the Legislature is in session."

—*In the Estate of A.B.*, 1 Tucker (N.Y. Sur. Rep.) 247, 249 (1866).

The following is a brief summary of the legislation signed by Governor Davis that will affect employers in California.

SB 2: HEALTH COVERAGE FOR UNCOVERED EMPLOYEES AND DEPENDENTS

- Requires large- and medium-sized employers to provide health care coverage to employees, their families and domestic partners.
- Scheduled effective dates: January 1, 2006 for large employers (200 or more employees within the state) and January 1, 2007 for medium employers (20 to 199 employees within the state), with additional compliance provisions phased in over a two-year period beginning January 1, 2004.
- Covered employers must provide health insurance to their employees or pay into the State Health Purchasing Program to purchase coverage.
- Businesses employing 20-39 employees would be affected only if the Legislature adopts tax credits to offset the program's cost.

- Creates a new state program called the State Health Purchasing Program, funded by the Managed Risk Medical Insurance Board.
- New law is estimated to provide health insurance to 1 million currently uncovered California workers.
- For additional information regarding SB 2 see Littler's ASAP "California Enacts 'Pay or Play' Employer-Financed Health Care" at <http://www.littler.com/nwsltr/index.html>.

SB 796 AND AB 276: ALCHEMIZING THE LABOR CODE: THE PRIVATE ATTORNEYS GENERAL ACT OF 2003

- Provides new lucrative incentive for workers and their private attorneys to file lawsuits against employers by creating a private right of action to enforce all Labor Code violations.
- Imposes new penalties of up to \$200 "per aggrieved employee."
- Half of penalties collected would be paid to California's General Fund with 25% each to a California Training Fund and the remaining 25% to the "aggrieved employees."
- Creates a potential new source for class action litigation because the law provides for recovery of penalties both individually and "in a civil action filed on behalf of [an individual] and other current or former employees against whom one or more of the alleged violations was committed."

- For additional information regarding SB 796 see Littler’s ASAP “The Private Attorneys General Act of 2004: One of California’s Newest Laws Threatens to Flood Employers With Class Action Lawsuits” at <http://www.littler.com/nwsltr/index.html>.

SB 777:
WHISTLEBLOWER HOTLINE &
POSTING REQUIREMENTS

- Existing law prohibits employers from making, adopting, or enforcing a policy that prevents an employee from disclosing violations of a state or federal statute, or a violation or noncompliance with a state or federal regulation to a government or law enforcement agency, or from retaliating against an employee who makes a disclosure. Such a violation is punishable as a misdemeanor.
- New law extends the protections to employees who report a violation of a state or federal rule, who refuse to *participate in an activity* that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation, or who exercised these rights in former employment.
- Prohibits an employer from retaliating against an employee for exercising any of these rights, including those provided under existing law.
- Adds an additional civil penalty for violations.
- Establishes a "whistleblower hotline" within the office of the Attorney General to receive telephone reports of violations of state or federal statutes, rules, or regulations, or fiduciary responsibilities, by an employer. The bill would require the Attorney General to refer calls received on this hotline to the appropriate government authority.
- Requires employers to display a list of

an employee's rights under whistleblower laws, including the telephone number of the hotline created by the bill.

SB 478:
NEW WORKPLACE LEAVE
PROGRAM: CRIME VICTIMS

- New *unlimited* right to workplace leave program for victims of a crime or certain persons who are related to a crime victim.
- Provides a leave of absence so that an employee may attend judicial proceedings related to the crime.
- Prohibits an employer from discharging or in any manner discriminating against an employee, in compensation or other terms, conditions, or privileges of employment.
- Authorizes the employee to file a complaint with the Division of Labor Standards Enforcement.

PUBLIC CONTRACTING

- **Sweatshop labor – “Sweatfree Code of Conduct” (SB 578)**
 - Repeals existing requirement that state agencies provide in every contract that the contractor certify that no foreign-made equipment materials or supplies were produced by “sweat shop” labor.
 - Imposes new requirements including the “Sweatfree Code of Conduct.”
 - Redefines “sweatshop labor” and excludes from the definition “forced labor” or “convict labor” performed by an inmate or a person employed by the Prison Industry Authority.
- **Expatriate corporations (SB 640)**
 - Prohibits state agencies from entering into any contract with an

expatriate corporation unless certain conditions are met.

- Expatriate corporation is defined as “a United States based company that has moved in name and on paper only to a tax haven country and has no substantial business activities in the country of reincorporation.”
- Purpose of the bill is to target publicly traded U.S.-based companies who are avoiding their fair share of California taxes and have undermined the interests and rights of their shareholders.
- Violation would be a misdemeanor.

- **Challenged Public Contracts (AB 453)**

- Provides that when a losing bid challenges the final contract decision, the winning contract may be entered into pending final decision on the challenge.

- **Prevailing Rate Work (AB 852)**

- Requires the Director of Industrial Relations to determine prevailing wage rate and to provide those wage rates upon request.

- **Elements of Prevailing Rate of Per Diem Wages (SB 868)**

- More clearly defines components of per diem wages to also include “worker protection and assistance programs or committees, and industry advancement and collective bargaining agreements administrative fees, as provided.”

AB 76:
SEXUAL HARASSMENT BY
NONEMPLOYEES

- Holds employers liable for the sexual harassment of an employee by any person, including clients or customers, if

the employer knew or should have known about the harassing conduct but failed to take appropriate corrective action. Expressly overrules *Salazar v. Diversified Paratransit, Inc.*, 103 Cal. App. 4th 131 (2002) (review granted).

- For additional information regarding SB 796, see Littler's ASAP "The Customer Is Not Always Right: California's Legislature Imposes Liability Based Upon Customer Harassment" at <http://www.littler.com/nwsltr/index.html>.

AB 196: TRANSGENDER DISCRIMINATION

- Changes the definition of sex discrimination to include "gender."
- Prohibits discrimination against transgender employees.
- Permits employers to require employees to comply with reasonable workplace appearance, grooming, and dress standards consistent with state and federal law, provided that employees are allowed to appear or dress consistently with their gender identity.
- For additional information regarding AB 196, see Littler's ASAP "California's New Protection Against 'Gender' Bias Prohibits Transgender Discrimination, Aims at 'Sex Stereotypes'" at <http://www.littler.com/nwsltr/index.html>.

AB 223: JUDGMENTS ON WAGE CLAIMS

- Current law permits employees appealing a wage decision of the Labor Commissioner to recover attorneys' fees only if the employee achieved a better result in court than was achieved before the Labor Commission.
- New law provides that employees who receive any judgment in their favor will be entitled to attorneys' fees, even

if the court reduces the Labor Commissioner's award.

AB 1719: NEW REQUIREMENTS RE: WORKPLACE SAFETY AND HEALTH COMPLAINTS

- Requires the Division of Occupational Safety and Health (DOSH) to notify a complainant of any action taken by DOSH on a particular safety or health complaint within 14 calendar days of taking such action.
- Further requires DOSH to annually compile and release on its website information pertaining to the complaints received and citations issued.
- Under existing law, the Bureau of Investigation (BOI) within DOSH conducts investigations where there is a serious injury to 5 or more employees, death, or a request for prosecution by DOSH. The new law requires DOSH to provide helpful information to BOI as well as to notify the prosecuting authorities within 14 calendar days of a determination that there is legally insufficient evidence of a violation of law if the prosecuting authorities request notice.

AB 17: DOMESTIC PARTNER BENEFITS FOR STATE CONTRACTORS

- Prohibits businesses that contract with the State of California from discriminating between employees who have spouses and employees who have domestic partners by requiring contractors to provide domestic partner benefits.
- Goes into effect January 1, 2007. Thereafter, the State is prohibited from entering into any contracts for goods/services of \$100,000 or more (per fiscal year) with businesses that do not comply with the statute. (Note: some exceptions apply.)

- Applies to contractors' operations:
 - Within California;
 - On real property outside California if the property is owned by the State or if the State has a right to occupy the property, and if the contractor's presence there is connected to a State contract; and
 - Anywhere in the U.S. where work related to a State contract is being performed.

OTHER LEGISLATIVE CHANGES

- **Service of DFEH complaints by private counsel (AB 1536)**
 - Under existing law, when a complaint is filed with DFEH, the department is required to serve the complaint upon the person, employer, labor organization or employment agency alleged to have committed the unlawful practice. Service is to be completed within 45 days.
 - New law provides that if person claiming to be aggrieved is represented by private counsel, such counsel and not the DFEH is to serve the complaint and service must be completed within 60 days.
- **Solvency of certain labor contractors (SB 179)**
 - Provides that any person or entity entering into a labor contract for construction, farm labor, garment, janitorial or security guard services knowing that the contract does not provide funds sufficient to allow the labor contractor to comply with all applicable laws is subject to liability and certain civil penalties.
- **Contracts in Foreign Languages (AB 309)**
 - Existing law requires that a person negotiating contracts in Spanish to

deliver to the other party prior to execution of the contract a Spanish translation of the contract.

- New law extends the above requirement to the foreign languages of Chinese, Tagalog, Vietnamese, and Korean, in addition to the Spanish language.

➤ **Union Bakers' Wages (AB 330)**

- Exempts certain employees in the wholesale baking industry from the meal period requirement in the Labor Code if such employees are covered by a valid collective bargaining agreement that contains certain specific terms.

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