

in this issue:

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California Edition

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MAKING NICE: The Results of the 2006 California Legislative Session For California's Employers

By Christopher E. Cobey

Impending elections can have differing impacts where a state legislature is controlled by one party, and the governor is of the other party. Sometimes, an onrushing election creates a policy gridlock, with neither the legislature nor the governor willing to compromise, or make the other side "look good." In other circumstances, pressure from the upcoming "performance evaluation" by the voters spurs the governor and the legislature to act constructively.

The chemistry in 2006 in Sacramento produced the latter scenario – and one of the most productive legislative sessions in recent years. Among the achievements of Republican Governor Arnold Schwarzenegger and the Democratic California Legislature were a two-step increase in the State minimum wage and mandatory discounts for prescription drugs for economically disadvantaged Californians. These achievements resulted from a new-found cooperation between the Governor and the Legislature.

Schwarzenegger demonstrated political skill by working actively with the Legislature to broker compromises on a variety of key public policy issues during the year. In doing so, he was able to take some of the credit for proposals initiated by the Legislature, thereby blunting a potential political weapon that could have been used against him in his November re-election campaign.

For California employers, the recently-concluded 2006 legislative session had, like the two most recent sessions, some useful and some not-so-useful new laws. By far, the most significant employment law of the year was the two-step increase in California's minimum wage. Though the minimum wage

was increased in an amount more than the Governor had first proposed, the increase was not indexed to allow automatic adjustments in future years. The minimum wage rate will increase 75 cents to \$7.50 per hour effective January 1, 2007. The minimum wage rate will increase again on January 1, 2008, to \$8.00 per hour. (See "A Rising Tide for the Smallest Boats: The Minimum Wage Increases in California and Elsewhere," Littler ASAP, August 2006.) Studies have shown that increasing the minimum wage affects a smaller and smaller proportion of the national workforce.

Apart from the minimum wage increase, there were few major changes affecting the California workplace. Following are summaries of the bills pertaining to new laws (effective January 1, 2007, unless otherwise noted) of interest to many California private sector employers:

- For employers required to train supervisors on sexual harassment under AB 1825, only supervisors located in California need be trained (AB 2095; amended Government Code § 12950.1). Prior to passage of this amendment, covered employers with supervisors located outside California who supervised California employees were uncertain about whether those supervisors were required to be trained. This clarification is expected to be reiterated in the final version of the regulations now in the process of being reviewed. The final version of the regulations are also expected to reiterate that a covered employer may have no more than two employees in California, but if one of

the two is the supervisor of the other California employee, and there are at least 48 additional employees outside of California, the California supervisor must receive the required sexual harassment training.

- Employers have slightly more latitude in accounting on employees' paystubs for overtime hours worked and paid in consecutive pay periods. (AB 2095; amended Labor Code § 204). According to this bill's digest, under existing law, all wages earned by a person in any employment are due and payable twice during each calendar month, except as specified. Existing law provides that this requirement shall be considered satisfied if the wages are paid not more than seven calendar days following the close of the payroll period, and further provides that the payment of wages for labor in excess of the normal work period must be made no later than the payday for the next regular payroll period. Existing law further requires an employer to furnish each employee semi-monthly or at the time of each payment of wages with an accurate itemized statement showing, among other things, the total hours worked by the employee, with a specified exception. This amendment to the statute provides that an employer has complied with the latter requirement if overtime hours worked in the current pay period are itemized as corrections on the paystub for the next regular pay period. This new statute further requires that corrections included in a subsequently issued paystub identify the dates of the pay period to which they refer.
- The required DFEH employment discrimination workplace poster and sexual harassment information sheet is made available online (AB 1806; amended Government Code § 12950(a); effective July 12, 2006). The post is now available online for download and printing at <http://www.dfeh.ca.gov/Publications/postersemp.asp> as DFEH-162.

Other new statutes apply to only some California employers:

- Sexual orientation is added to the list of characteristics on which discrimination

may not be based in the conduct or operation of state or state-funded programs or activities; prohibited conduct includes acting on the perception that the person has any of those listed characteristics or is associated with another person who has or is perceived to have any of those protected characteristics (SB 1441; amended Government Code § 11135).

- No personal information of health care providers, employees, volunteers or patients of reproductive health care centers may be posted on the internet (AB 2251; new Government Code § 6218 *et seq.*).
- Food employees suffering from symptoms associated with certain illnesses are prohibited from engaging in food handling (SB 144; new Health & Safety Code § 113700 *et seq.*, especially §113949.1).
- Regulations on the car washing and polishing industry that provide specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions are extended to January 1, 2010 (SB 1468; amended Labor Code § 2067).

In addition to those new statutes, the Fair Employment and Housing Commission (FEHC) worked throughout 2006 attempting to finalize the regulations further explaining the requirement of sexual harassment training for managers in some California employers. (See, "Third Time a Charm? The FEHC Further Refines Draft Regulations as Employers Prepare for the 2007 Training Year", Littler ASAP, September 2006.)

California employers might also want to be thinking ahead to whether and how the ban on the use of hand-held cell phones by drivers may affect their employees who drive as part of their job duties (SB 1613; new Vehicle Code section 23123). The ban becomes effective on July 1, 2008.

The Governor's veto rate of bills passed by the Legislature in 2006 – 22 percent – was slightly reduced from his 24 and 25 percent rates in the previous two legislative sessions.

Among the proposals which would have brought greater change to the California work-

place that were vetoed by the Governor and might be expected to resurface in the 2007 legislative session were proposals to:

- Require single-payer health insurance and require large employers to fund employees' health care benefits (AB 840, 1414). The Governor has announced that expanded health care and insurance for Californians will be a goal of his administration in 2007.
- Increase penalties for violations of gender pay equity; require employers of 50 or more persons to provide each employee with a written statement setting forth the employee's job title, wage rate, and an explanation of how the employee's wages are calculated (AB 2555).
- Make employees locked out during a strike eligible for unemployment insurance benefits (AB 1884).
- Prohibit discrimination in employment against a person because he/she is a victim of domestic violence, sexual assault, or stalking (SB 1745).

Looking forward to the November election, it would be impossible to improve upon the results of the 2001 bipartisan gerrymander of California's state legislative and Congressional districts. In the two general elections since the gerrymander went into place, not a single one of the State's legislative or Congressional districts have changed party hands. Little if any change in the seats, let alone a change in the Democrats' control of either the Legislature or the Congressional delegation, is anticipated.

In extra-legislative developments, on October 2, 2006, the California Division of Labor Statistics and Research announced that based on a 4.1 percent increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers, the new minimum hourly rate for exempt computer software employees will be \$49.77 effective January 1, 2007. The new minimum wage for licensed physicians and surgeons, also effective January 1, 2007, will be \$64.18. A copy of the Division's announcement can be found at <http://www.dir.ca.gov/dlsr/CPI/OTCPI.pdf>.

Littler clients can find updated information on both state and national legislation affecting employers in Littler Mendelson's Monitor, at www.littler.com.

com. All California legislation can be found at the Official California Legislative Information.

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