

# Law Report

LEGAL NEWSLETTER

VOLUME 6, ISSUE 1

## CALIFORNIA'S NEW EMPLOYMENT LAWS FOR 2005

### *Employers Must Comply with Revised and Expanded Workplace Rules*

California continues to be among the leaders in state regulation of the workplace. This article summarizes this state's new employment laws effective in 2005. If such standards are not already in place, employers outside California should note these developments as possible models for future regulation of the workplace in their states.

**Larger Employers Must Provide Sexual Harassment Training to All Supervisory Employees:** California's Fair Employment and Housing Act (FEHA) protects workers from unlawful sex discrimination and harassment. FEHA now requires any California business with 50 or more employees or independent contractors to provide, by January 1, 2006, at least two hours of "classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005." California Government Code §§ 12950.1(a), 12950.1(c). However, any employer who has already provided such training to a supervisor since January 1, 2003 is not required to provide the training during

2005. After January 1, 2006, each such business "shall provide sexual harassment training and education to each supervisory employee once every two years." Gov't Code § 12950.1(a).

### ***Large employers must now provide sexual harassment training to its supervisors by January 1, 2006***

The required training and education "shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation." Gov't Code § 12950.1(a).

A "supervisor" is any worker with the power to exercise independent judgment in personnel management matters, including (a) decisions to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; (b) authority to direct the work of other employees or adjust

their grievances; or (c) ability to effectively recommend any of the actions in (a) or (b). Gov't Code § 12926(r). Thus, administrative assistants, with the ability to make recommendations to their managers, must receive such training.

The Fair Employment and Housing Commission may issue orders to employers to comply with this new law. Gov't Code § 12950.1(e). An employer's failure to provide this training may be considered a factor in any later sexual harassment complaint brought by a current or former employee. On the other hand, an employer's provision of such training does not insulate that employer from sexual harassment liability. Gov't Code § 12950.1(d).

This required training and education "is intended to establish a minimum threshold and should not discourage or relieve any employer from providing longer, more frequent, or more elaborate training and education ... in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination." Gov't Code § 12950.1(f).

**Employees Must Meet Strict Procedural Requirements Before Utilizing the "Sue Your Boss" Law:** Beginning January 1, 2004, the "Labor Code Private Attorney General Act of 2004" (California Labor Code §§ 2698 - 2699) permitted any current or former employee to sue on his/her own behalf and/or the behalf of other current or former employees for civil penalties that could otherwise allegedly be assessed by California gov-

ernment agencies. Such penalties include the 30-day waiting time penalty imposed on an employer who fails to provide all compensation owing at the time of termination and the daily penalty imposed for failure to provide workers meal breaks or rest periods. Labor Code § 203, 226.7.

California curtailed this so-called "Sue Your Boss" law on August 11, 2004. Now, an aggrieved employee may initiate a Sue Your Boss civil action to recover penalties under Labor Code § 2699

### ***California has curtailed the 2004 "Sue Your Boss" Law***

only after complying with specific procedural and administrative requirements and providing specified written notice to the pertinent agency and employer. Labor Code § 2699.3.

For most such penalties, the employee who believes the employer has violated his rights must first notify that employer and the California Workforce Development Agency (WDA) by certified mail, specifying the code sections allegedly violated and the facts and theories to

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support the violation. The WDA must then give notice to the employer and employee within 33 days whether it plans to investigate the complaint. If the WDA decides not to investigate or fails to give the notice within 33 days, the employee can file the suit. If the WDA decides to investigate, it has 120 days to conduct that investigation. The employee can then file suit if the WDA: (a) decides not to charge the employer with a violation; or (b) fails to issue a citation against the employer within 158 days of its initial notice of investigation. Labor Code § 2699.3.

***Domestic Partners Are Entitled to the Same Rights to Insurance Benefits as Spouses:*** FEHA prohibits discrimination on the basis of an employee's marital sta-

tus, whether that status is unmarried, married, divorced, widowed, etc. Gov't Code § 12940(a). Effective January 1, 2005, domestic partners are entitled to the same insurance rights, protections and benefits as are accorded spouses under California law. California Health & Safety Code § 1374.58; Insurance Code §§ 381.5, 10121.7. Thus, it

### ***Domestic partners have the same insurance benefits as spouses***

might now be argued persuasively under FEHA that it is unlawful for an employer to discriminate against an individual because that person has a current or former domestic partnership. "Domestic partners" are "two adults who have chosen to

share one another's lives in an intimate and committed relationship of mutual caring." A "domestic partnership" is established by both persons filing a Declaration of Domestic Relationship with the California Secretary of State which fulfills specific requirements, including the partners' membership in (a) the same sex or; (b) one or both members' qualification for social security retirement benefits. California Family Code § 297.

***Changes in Some Overtime Exemptions:*** Some licensed or other highly skilled professionals are exempt from overtime compensation if they meet certain criteria, including a monthly salary equal to no less than two-times minimum wage for a 40-hour week. That minimum salary level is currently \$2,340.00

per month. However, effective January 1, 2005, an employer may pay a licensed physician primarily engaged in his or her practice a minimum hourly rate of \$59.11 and still maintain that doctor's exempt-from-overtime status. Labor Code § 515.6(a).

### ***Some minimum pay for exempt workers is now higher***

California also permits employers to hire qualified computer professionals on an hourly, but exempt-from-overtime basis. Effective January 1, 2005, the minimum hourly rate is \$45.84. Labor Code § 515.5.

If you would like any further information regarding any of these additions to California employment law, please contact our office.