

# New Year will

Here's how you can make sure  
**you're in compliance**

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Perhaps buoyed by a growing statewide sensibility that a stronger economy will be built in part by retaining and attracting new employers to California, 2004 has brought some relief to employers in the form of a lower volume of major employment legislation and a partial rollback of 2003 legislation that was onerous to employers. While it is too early to tell whether this year's workers' compensation reform (SB 899) will produce the kind of relief promised, here are other new employment laws that you need to know about for 2005.

## **MANDATORY ANTI-HARASSMENT TRAINING FOR SUPERVISORS (AB 1825)**

Employers with 50 or more workers must provide at least two hours of interactive anti-harassment training and education to all supervisors. The program must provide information and guidance about federal and state laws that prohibit sexual harassment; procedures and methods to prevent and correct sexual harassment, discrimination and retaliation; and the remedies available to victims of sexual harassment.

Trainers or educators, who are experts in the prevention of harassment, discrimination and retaliation, must present the training and include practical examples in their instruction. This suggests that most training will be done by human resource professionals or lawyers brought in from outside since many in-house personnel do not have high expertise with these issues.

Under this law, "employer" includes any person regularly employing 50 or more people, regularly receiving the services of 50 or more people pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly. As such, AB 1825 counts independent contractors and temporary workers in determining a business' employee count.

The training must be completed by Jan. 1, 2006, and the training must be repeated every two years. Employers can count compliant training that occurred since Jan. 1, 2003. Since new supervisors must complete the training within six months of their new duties, some employers may require a training program every six months.

Employers should be planning their training now. While compliant training will not insulate an employer from liability for sexual harassment, it should have the practical effect of reducing misconduct in the first instance and it will be used by counsel, in tandem with recent California Supreme Court precedent, to defend against claims of employees who failed to

complain about sexual harassment early so they could avoid further alleged mistreatment.

## **CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT (SB 1809)**

In response to concerns from the California business community, Gov. Schwarzenegger helped revise the California Private Attorneys General Act of 2004, which created new penalty risks for employers and formed the cornerstone of hundreds of class-action lawsuits alleging Labor Code violations ranging from overtime pay practices to workplace poster font size infractions.

The revision—AB 1809—put some brakes on runaway litigation under the act. Some of the major changes to the act, which apply retroactively to Jan. 1, 2004, are:

- The elimination of claims under the act for certain de minimus, technical labor code violations;
- Before an action can be filed in Superior Court under the act, an aggrieved employee must first notify the employer and the California Labor Workforce Development Agency (and in some cases CalOSHA) of alleged serious Labor Code violations in writing and the LWDA must issue a decision adverse to the employee or it fail to investigate;
- For most other Labor Code violations (e.g., non wage/hour or OSHA issues), the employer has 33 days after receiving the employee's notice to cure the alleged violation and to give notice of the cure to the employee and the LWDA. If the employee disputes the cure, he or she must quickly file with the LWDA. If the LWDA decides adverse to the employer or fails to act, the employee can file in Superior Court; and
- The Superior Court is authorized to reduce the maximum civil penalties if "to do otherwise would result in an award that is unjust, arbitrary, and oppressive, or confiscatory."

## **DOMESTIC PARTNER RIGHTS (AB 205)**

AB 205 takes effect Jan. 1, 2005, and essentially will provide California registered domestic partners with all of the rights and responsibilities afforded married persons under California law. The California Superior Court will have jurisdiction over all proceedings to legally separate, nullify or dissolve a registered domestic partnership, including child custody. You can find out more at [www.ss.ca.gov/dpregistry/dp\\_faqs.htm](http://www.ss.ca.gov/dpregistry/dp_faqs.htm).

AB 205 does not affect federal laws. Since federal law does not recognize the relationships of same-sex couples, registered

# Ring In New Employment Laws

domestic partners do not receive “spousal” parity under federal tax and employment laws.

In essence, any workplace benefit or policy benefiting employees and their spouses that is provided by an employer or California law must be provided to employees and their registered domestic partners. For example:

- Employers who provide health insurance to spouses must offer insurance to registered domestic partners;
- CalCOBRA, a state law applicable to employers with two to 19 employees, will afford health insurance continuation rights for registered domestic partners effective Jan. 1, 2005. Also, registered domestic partners or their children still may be entitled to permitted continuation coverage as “dependents” under the insurance plan even where federal COBRA, covering employers of 20 or more employees governs;
- Employee leave under the California Family Rights Act requires employers of 50 or more employees to permit employees up to 12 weeks unpaid leave of absence to bond with a newborn or adopted child, care for a family member (including registered domestic partners) with a serious health condition, or the employee’s own serious health condition.
- Orders and garnishments involving registered domestic partners for spousal and child support must be obeyed;
- California Paid Family Disability Leave Insurance provides employees limited

replacement wages for up to six weeks of leave in any 12-month period to care for a seriously ill child, spouse, parent or domestic partner, or to bond with a new child by birth, adoptions or foster care placement. PFL deals only with compensation during the leave and is not an entitlement to leave.

## HEALTH CARE COVERAGE REQUIREMENTS (PROPOSITION 72)

California voters defeated Proposition 72 Nov. 2, effectively eliminating the call of SB 2 last year for mandatory health care coverage in California.

If passed, Prop 72 would have meant certain employers would be required to provide health coverage for their employees and in some cases dependents through either (1) paying a fee to a new state program primarily to purchase private health insurance coverage or (2) arranging directly with health insurance providers for health care coverage. The state also would have had to establish a new program to help lower-income employees pay their share of health care premiums.

## SECURITY FOR PERSONAL INFORMATION (AB 1950)

California law has for many years required employers to take extra precautions to ensure the privacy of employee medical information, including separate file systems, computer passwords and other “need to know” access requirements. Effective

Jan. 1, 2005, other “personal information” about employees will have similar protection.

AB 1950 requires businesses that own or license personal information about a California resident to maintain reasonable security procedures and practices to protect personal information from unauthorized access, destruction, use, modification or disclosure. AB 1950 also requires businesses that disclose personal information to a third-party to receive a contract stating how those entities maintain reasonable security procedures.

“Personal information” refers to an individual’s name in combination with any one or more of the following, when either the name or the date elements are not encrypted or redacted: Social Security number; driver’s license number or California identification card number; account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account; and medical information.

Now, for example, extra security measures should be taken to protect automatic deposit bank account information and credit card numbers obtained in expense reports.

## FEDERAL WAGE & HOUR REGULATIONS


Changes to the federal Fair Labor Standard Act became effective in August. Despite the publicity about these changes, they are unlikely to be very relevant to day-to-day operations of California

employers with California employees since the California wage and hour laws are almost always more favorable to employees.

The regulations will, however, be relevant to out-of-state employers and California companies with out-of-state workers. For more information, visit [www.dol.gov/fairpay](http://www.dol.gov/fairpay).

One major FLSA change is raising the threshold for the “salary test” part of the overtime exemption tests under Federal law from \$8,060 to \$23,660. (The amount under California law is \$28,080).

Other major differences between California and FLSA include California’s “daily” overtime (the FLSA does not) and that the “primary duties” part of the overtime exemption tests are more than 50 percent of the time worked (not the most important functions of the work per the FLSA).

While it looks like we may be moving away from a high volume of legislative changes in the coming years, case law precedent will continue to rapidly evolve. California employers should consult with human resource professionals and lawyers to guide them through the maze of employment regulation. 

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