

ORANGE COUNTY BUSINESS JOURNAL

New Employment Legislation for 2005

By Greg S. Labate, Esq. And Mary E. Lynch, Esq.

SB 1809: Amendment to The Private Attorney General Act ("PAGA")

This emergency legislation addresses problems created by PAGA. It allows courts to reduce PAGA penalties, eliminates private causes of action and penalties for most minor posting violations, repeals requirement for employers to file job applications with DLSE, establishes procedural rules that must be followed before PAGA claims can be filed, and, in certain situations, allows employers to cure problems and prevent lawsuits. Although this law provides employers with a glimmer of hope, regular self audits of all policies and practices are essential to avoiding these very expensive PAGA class action lawsuits.

AB 1825: Mandatory Sexual Harassment Training for Supervisors

This law requires employers (with 50 or more employees) to provide sexual harassment training to all supervisory employees. The law defines "employees" broadly to include leased and temporary employees, independent contractors and persons acting as an agent of the employer. Supervisory employees employed as of July 1, 2005 must receive training by January 1, 2006. Newly hired or promoted supervisory employees must receive training within 6 months. Follow up training must occur at least once every two years. The training must consist of at least two hours of interactive training and education regarding the prohibition against, prevention and correction of sexual harassment and the remedies available to victims of sexual harassment. Although this law does not define "supervisor," California law generally defines a "supervisor" in very broad terms. Thus, employers should provide all employees who have even minimal supervisory duties with the mandated training. Failing to provide appropriate training may adversely affect otherwise legitimate defenses. As such, employers should begin this mandated training as soon as possible.

AB 205: The California Domestic Partner Rights and Responsibilities Act

This law seeks to eliminate the distinction between registered domestic partners and legal spouses by providing registered domestic partners with the same rights, benefits and opportunities conferred upon legal spouses under California law. (Note: The term "registered domestic partner" includes not only same sex couples, but couples where one of the partners is over 62 years old). The law does not eliminate distinctions in areas where employers choose to offer spouses benefits that are not mandated by state law. Employers should review all policies to guarantee compliance with this law.

AB 2208: The California Insurance Equality Act

This requires all forms of insurance regulated by the Department of Insurance to provide equal coverage to employees' registered domestic partners with the same terms and conditions that are provided to employees' spouses. It precludes plans and policies from offering or providing coverage to registered registered domestic partners that is not equal to that offered

or provided to spouses. Verification of a domestic partnership is allowed only if verification of a marriage is also required.

Proposed Meal and Break Period Regulations

If passed, these proposed regulations will provide employers with more flexibility in complying with meal and rest period requirements. They establish criteria to determine if a meal period has been "provided," explain the timing for the required meal periods, and clarify that the monetary sanction for violating the meal period rules is a penalty not a wage. Employers should monitor this issue.

SB 1618: Use of Social Security Numbers on Pay Stubs

This requires employers to furnish employees with pay stubs showing no more than the last four digits of their social security number or an existing employee identification number other than a social security number. Previously, employers were required to include employees' entire social security number on their pay stubs. Employers have until January 1, 2008 to make this change.

Changes To The Acceptable "A" List Documents For I-9 Forms

The following documents are no longer acceptable to establish identity and employment eligibility: (1) Certificate of U.S. Citizenship; (2) Certificate of Naturalization; (3) Permanent Resident Card or Alien Registration Receipt Card with photograph; (4) Unexpired reentry permit; or (5) Unexpired Refugee Travel Document.

HR 4306: Electronic Completion and Storage of I-9 Forms

This allows employers to electronically complete and store I-9 Forms and authorizes electronic signatures by employees and employers. Employers must still view the original documents presented by the employee to prove the individual's identity and work authorization. The law does not become effective until the Department of Homeland Security promulgates final implementing regulations or 180 days after the President signed the bill, which was November 2, 2004, whichever comes first.

AB 254: Changes To Cal-COBRA

This law eliminates senior Cal-COBRA health insurance eligibility for individuals who would have been eligible on or after January 1, 2005, and allows seniors to take advantage of HIPAA options at lower prices. Senior Cal-COBRA coverage costs as much as 231% of what the group rate had been while the individual was employed. With senior Cal-COBRA in place, seniors were precluded from taking advantage of HIPAA because HIPAA coverage is not available for someone who has other insurance options.

Conclusion

Due to the effect these changes have on California employment law, we strongly recommend employers have their handbooks and policies reviewed by experienced labor counsel to ensure compliance with the new legislation.

GREG S. LABATE, ESQ.

Partner at Sheppard, Mullin, Richter & Hampton, Orange County office. Co-Chair of Labor & Employment Practice Group. Represents employers only. Trial attorney. Dartmouth College, magna cum laude. UCLA Law School. Labor Law Section of the Orange County Bar Association. Published author and frequent lecturer. Contact: (714) 424-2823; glabate@sheppardmullin.com.

MARY E. LYNCH, ESQ.

Associate at Sheppard, Mullin, Richter & Hampton, Orange County office. Provides general advice in all areas of labor and employment law to both large and small employers throughout California. Defends employers in state and federal court, and before government agencies. Published author and frequent lecturer on employment issues. Contact: (714) 424-2826; mlynch@sheppardmullin.com.

Sheppard, Mullin, Richter & Hampton is a full service law firm with more than 430 attorneys in nine offices located in California (Orange County, Los Angeles, San Francisco, Santa Barbara, Century City, Del Mar Heights, San Diego), and in New York and Washington, D.C. Sheppard Mullin is an "AmLaw 100" firm that provides legal expertise and counsel to U.S. and international clients in a wide range of practice areas, including Antitrust, Corporate and Securities, Entertainment and Media, Finance and Bankruptcy, Government Contracts, Intellectual Property, Labor and Employment, Litigation, Real Estate/Land Use, and Tax, Employee Benefits, Trusts & Estate Planning. The firm was founded in 1927. Sheppard, Mullin, Richter & Hampton paid for this space and is solely responsible for its content.