



## **CALIFORNIA HEALTH CARE REFORM IS ONE STEP CLOSER**

**T**he California Assembly has voted in favor of a landmark health care reform measure—Assembly Bill 1.1, the Health Care Security and Cost Reduction Act—which is backed by Governor Schwarzenegger. The bill is now heading to the Senate for consideration. If approved by the Senate and signed by the governor, the bill would then be placed on the ballot for voters in November 2008.

The measure would require all Californians to have health coverage either through their employers, through government programs, or purchased on the open market. Employers that do not provide health insurance to their employees would be required to contribute to a state insurance pool at a payroll tax rate of between 1 and 6.5 percent, depending on the employer's size. The universal health coverage mandate would also be funded through various other means, including a tobacco tax and a tax on hospitals. In addition, the measure guarantees that no one will be turned away from buying insurance based on their age or medical history.



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**PLEASE NOTE  
NEW FIRM NAME AND  
CONTACT**

## **REMINDER: NEW LAWS EFFECTIVE IN 2008**

· **SB 1618— Itemized Pay Statements**  
· Effective January 1, 2008, employers are prohibited from including any more than the last four digits of an employee's social security number on the employee's itemized pay stub. Alternatively, employers may use an employee identification number.

· **IRS Standard Mileage Rate**  
· The IRS announced the 2008 standard mileage rate: 50.5 cents per mile, \$0.02 increase over the 2007 rate. The increase should come as no surprise given the rising cost of fuel.

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## USERRA RIGHTS MAY NOT BE ELIMINATED BY CONTRACT

On December 6, 2007, the Court of Appeals decided whether a severance agreement containing a provision releasing an employee's employment related claims based on the employee's membership in the military or military service is enforceable.

Plaintiff Brian Perez appealed from a judgment on his complaint for wrongful termination, breach of oral contract, failure to pay overtime wages in violation of the statute, and defamation, claiming the court erred in enforcing a severance agreement that was against public policy contained in, among other things, the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. § 4301 et seq.; USERRA), and obtained under duress.

The Court of Appeal determined that because USERRA directs that its provisions may not be eliminated by a contract, the release of rights in the severance agreement may not be enforced to the extent it deals with the claims of termination based on plaintiff's membership in the military or his military service. As to plaintiff's other claims for defamation and overtime payments, there is no basis to invalidate the release and therefore, the Appellate Court affirmed the trial court's holding in that respect.



**Take Away Tip:** Employers should be careful in drafting agreements which include a release of rights associated with USERRA, and consult with legal counsel concerning such agreements. If you would like further information, Ms. Koumas frequently assists businesses with drafting severance agreements and releases and can lend assistance, as needed, by contacting her at [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com) or (619)398-8301.

### EMPLOYER MUST EXHAUST ADMINISTRATIVE REMEDIES BEFORE BEING AFFORDED RIGHT TO RELIEF IN COURT

On December 27, 2007, a California Court of Appeal decided the case of *Gonzalez v. Beck* involving unpaid wages and the issue of exhaustion of administrative remedies.

Plaintiff Joseph Gonzalez (plaintiff) worked as a caregiver/housekeeper for defendants Vladimir Beck, Slavko Beck, Slavika Beck, and the Beck Family Home (defendants). Upon termination of her employment, plaintiff filed a claim for unpaid wages with the California Labor Commissioner (Commissioner). When defendants failed to answer or appear at the administrative hearing on her claim, and after considering the testimony, documentary evidence and arguments, plaintiff obtained from the Commissioner an award upon which a judgment was entered in the trial court. Defendants' subsequent motion to set aside the judgment was denied by the trial court on the grounds that they had failed to exhaust their administrative remedies pursuant to Labor Code section 98, subdivision (f) (section 98(f)) and *Jones v. Basich* (1986) 176 Cal.App.3d 513.

On appeal, defendants contend that they were not required to exhaust their administrative remedies under section 98(f) because they did not receive actual notice of the administrative pro-

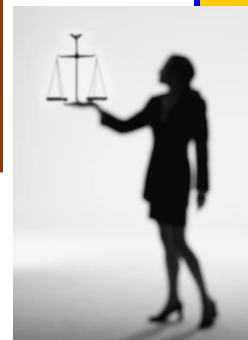
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ceedings until well after the judgment was entered in the trial court. The Appellate Court held that section 98(f) requires defendants, in accordance with Code of Civil Procedure section 473, to move to set aside the award before the Commissioner prior to seeking judicial relief from their default in the administrative proceeding.

In general, a defendant in an administrative wage claim proceeding who fails to appear or answer may apply to the Commissioner for relief in accordance with the procedures set forth in Code of Civil Procedure section 473. The defendant may instead choose to appeal to the trial court within ten days after notice of the decision. (§ 98.2, subd. (a).) It has been held that the right to appeal under Labor Code section 98.2 is distinct from other judicial proceedings in that there is no requirement that a defendant either participate in the commissioner's hearing or apply for administrative relief in order to appeal and obtain a trial de novo. If, however, the defendant fails to file a timely appeal of the Commissioner's award in the trial court, it shall have no right to "relief" in any court from its failure to appear or answer, unless it has first applied to the Commissioner for relief from default. (§ 98(f).) Therefore the judgment was affirmed by the Court of Appeal.

**Take Away Tip:** Every employer who receives notice of a claim filed before the Labor Commissioner should timely respond and/or appear in order to satisfy its duty to exhaust its administrative remedies prior to seeking any relief from a trial court; or alternatively, timely file an appeal of any such judgment. For more information about handling administrative claims, contact Elizabeth Koumas (619) 398-8301 or [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com).



## CALIFORNIA SUPREME COURT CASE UPDATE

The United States Supreme Court has granted certiorari on **December 7, 2007**, for the following case: *Huber v. Wal-Mart*, relating to disabled workers. The issue is whether, under the Americans with Disabilities Act, disabled employees must be reassigned to a vacant position for which they are qualified or merely be permitted to apply for such a position. Stay tuned to future newsletters where we will apprise you of the Supreme Court's decision on this important issue to employers.

In August 2006, the Supreme Court had previously agreed to review the case, *Williams v. Genentech*, relating to the burden of proof required in a disability discrimination case. However, on **December 19, 2007**, the court dismissed the review, in light of the decision in the case of *Green v. State of California (Oct. 2007)*.

A former stationary engineer at a state correctional facility who had contracted Hepatitis C, presumably from sewer pipes at the facility, and who suffered an unrelated back injury, had the burden of proving, in his FEHA disability discrimination action against the state, that he had the ability to perform the essential duties of his job with or without reasonable accommodation, rather than the state having to prove his inability as an affirmative defense; as under federal Americans with Disabilities Act (ADA), the ability to perform job's duties was an element of the cause of action under FEHA.

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· **Finalized Sexual Harassment Training Regulations**

· In August 2007, the Fair Employment and Housing Commission issued its final approval of regulations governing mandatory sexual harassment prevention training for supervisors. Contact Ms. Koumas to schedule your required training.

· **New 2008 Forms:** Employers are reminded about the new forms which must be used as of January 2008, including but not limited to I-9, EEO-1, and Earned Income Tax Credit Notice. Contact Elizabeth Koumas for these new forms.

**State Minimum Wage Increase:** California minimum wage increase from \$7.50/hr to \$ 8.00/hr. And White Collar exemption salary requirement increase (\$640/week, \$2,773.33/month, \$33,280/year).

**Minimum Hourly Rate for Computer Software Exemption:** The minimum hourly wage that must be paid to exempt computer software employees, from the current \$49.77 to \$36.

PLEASE REVIEW THE FIRM'S NOVEMBER AND DECEMBER 2007 NEWSLETTERS, AT  
WWW.KOUMASLAW.COM

FOR INFORMATION CONCERNING OTHER NEW LAWS TAKING EFFECT BY 2008

## FUTURE SEMINAR

### LEARN MORE ABOUT EMPLOYMENT LAW: FROM A TO Z

Elizabeth Koumas, along with another knowledgeable attorney, will present a day long training seminar on Employment Law, covering topics from recruiting to termination.

**Date: June 24, 2008**

**Time: 8:30 a.m. to 4:30 p.m.**

**Location: TBD**

Topics Include:

- Human Resource Records and Documents
- Hiring Policies and Practices
- Overview of Family Medical Leaves
- Harassment Training Rules
- Performance, Discipline, Termination and Recommended Documents
- Essential Wage and Hour Practices and Benefits

The seminar will be presented through Lorman Educational Service. For a complete agenda, and for registration information, contact Elizabeth J. Koumas at (619) 398-8301 or [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com).



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