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ONLY 4 DAYS LEFT TO COMPLY WITH NEW WORKERS' COMPENSATION POSTING REQUIREMENTS

Effective October 8, 2010, California employers must comply with new workers' compensation posting requirements as a result of recently passed regulations. All California employers must post a new "Notice to Employees--Injuries Caused by Work" poster by October 8. Starting on October 8th and thereafter, all employers must also distribute a new "Your Rights to Workers' Compensation Benefits" pamphlet to all new employees. Additionally, employers must begin using a revised DWC-1 Claim Form/Notice of Potential Eligibility. Finally, employers who utilize or who are implementing, changing or terminating a medical provider network (MPN) must create a MPN Notice to post and distribute to injured employees.

The Division of Workers' Compensation (DWC) has posted new frequently asked questions (FAQs) in response to inquiries about compliance with recently amended regulations on medical provider networks (MPNs). In addition, the DWC Web site provides a fillable version of the revised notice of the MPN plan modification form and sample MPN notice language for required employee notices. A sample MPN employee notification is currently on the DWC Web site which can still be used after Oct. 8 because it complies with both current MPN regulations and the revised MPN regulations.

Failure to comply with the new posting requirements can lead to fines of up to \$7,000.

For a copy of the new DWC-1 Claim Form and "Notice to Employees" poster, see the firm's website.

WORKERS' COMP CELEBRATES 100 YEARS - BUT ISN'T GETTING ANY EASIER



Workers Comp is celebrating its 100th year in California, but managing work comp claims is not getting any easier to handle and remains a challenge for many HR specialists. Between navigating the rules for returning an injured worker to the workplace and maintaining the required postings to convey required information to employees who may get injured on the job, the headaches never seem to end.

Don't underestimate the legal risks involved when disciplining or terminating a workers' comp claimant, even if it is warranted, just as it would be for any other worker. Once released to return to work with limitations or restrictions, a workers' comp claimant may request a light-duty accommodation, which could trigger ADA/FEHA disability law protections. You are also dealing with potential FMLA/CFRA family and medical leave issues, as well as job restoration rights provided by California's workers' comp law.

In California, an employer may not discharge or otherwise discriminate against an employee because the employee filed a claim for compensation. The penalty for such discrimination is a 50 percent increase in compensation, to a maximum of \$10,000. In addition, an employee discharged under these circumstances is entitled to reinstatement with back pay and up to \$250 in costs. Also, the California Supreme Court has decided that an employee may sue in civil court for violation of job discrimination laws and for wrongful discharge. In that case, punitive and compensatory damages are available as remedies, and that means costs can increase dramatically.

The employer must keep posted in a conspicuous place a notice stating the name of its workers' compensation insurance carrier or a statement that it is self-insured. The notice must be easily understandable and posted in both English and Spanish where there are Spanish-speaking employees. The notice must also include the following details:

- How to get emergency medical treatment, if needed
- The kinds of events, injuries, and illnesses covered by workers' compensation
- The injured employee's right to receive medical care
- The rights of the employee to select and change the treating physician after the first 30 days
- The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, vocational rehabilitation services, and death benefits, as appropriate
- To whom injuries should be reported
- The existence of time limits for the employer to be notified of an occupational injury

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- The protections against discrimination
 - The location and telephone number of the nearest information and assistance employee
- Failure of an employer to provide the notice required by this automatically permits the employee to be treated by his or her personal physician with for an injury occurring during that failure. Failure to post such notices is a misdemeanor and is evidence of non-insurance as well.

CALIFORNIA LEGISLATIVE UPDATE

Governor Schwarzenegger signed several employment bills into law on September 29, 2010, which include, but are not limited to, the following:



- **Senate Bill 1252** (FEHA– Housing Technical Revisions) - the Department of Fair Employment & Housing’s bill making technical amendments to the housing provisions of the Fair Employment and Housing Act (FEHA). Effective January 1, 2011, the bill will: (1) amend the FEHA to conform the civil penalty caps provided for in Government Code section 12987 to those currently stated in the federal Fair Housing Amendments Act; (2) make technical revisions to add “source of income” to the list of protected characteristics, which is already part of the FEHA, in Government Code sections 12920, 12921, and 12955.8.; and (3) amend Civil Code sections 51.2 and 51.10 and Government Code section 12955 to clarify that admission preferences based on age, imposed in connection with a federally-approved housing program, do not constitute age discrimination in housing.
- **Senate Bill 1304** (Employment: leave and benefits)- Prior law required that employees of the state who have exhausted all available sick leave be permitted to take a leave of absence with pay, not exceeding 30 days for the purpose of organ donation and not exceeding 5 days for bone marrow donation, as prescribed. This new law requires private employers to permit employees to take similar paid leaves of absence for organ and bone marrow donation. The bill would require a private employer to restore an employee returning from leave for organ or bone marrow donation to the same position held by the employee when the leave began or an equivalent position. It further prohibits a private employer from interfering with an employee taking organ or bone marrow donation leave and from retaliating against an employee for taking that leave or opposing an unlawful employment practice related to organ or bone marrow donation leave. The bill would also create a private right of action for an aggrieved employee to seek enforcement of these provisions.
- **Assembly Bill 569** (Meal periods: exemptions)- Prior law prohibited, subject to certain excep-

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tions, an employer from requiring an employee to work more than 5 hours per day without providing a meal period and, notwithstanding that provision, authorizes the Industrial Welfare Commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the order is consistent with the health and welfare of affected employees. The passage of this bill exempts from these provisions employees in a construction occupation, commercial drivers, employees in the security services industry employed as security officers, and employees of electrical and gas corporations or local publicly owned electric utilities, as defined, if those employees are covered by a valid collective bargaining agreement containing specified terms, including meal period provisions.

- **Assembly Bill 1729** - amends Section 18974.5 of the Government Code, relating to civil service examinations. Under the State Civil Service Act, veterans of the Armed Forces who take an entrance examination for state employment are allowed extra points by virtue of their status as veterans. Prior law provided that if a member of the Armed Forces successfully passes a state civil service examination and becomes qualified for the veterans' preference within 6 months after the establishment of the employment list, he or she is entitled to receive the additional points at that time. The passage of this bill extends the time in which a member of the Armed Forces may receive the additional points to 12 months after the establishment of the employment list.

The Governor also *vetoed* several employment related bills, including but not limited to:

- **Assembly Bill 482** (Employment credit reports)- Per the Governor's commentary, this bill would prohibit an employer from using a consumer credit report for employment purposes with certain exceptions. This bill is similar to legislation previously vetoed for the last two years on the basis that California's employers and businesses have inherent needs to obtain information about applicants for employment and existing law already provides protections for employees from improper use of credit reports. As with the last two bills, this measure would also significantly increase the exposure for potential litigation over the use of credit checks.
- **Assembly Bill 1881** (Recovery of Wages: liquidated damages) - This bill would increase liquidated damages in civil actions for minimum wage violations to twice the wages unlawfully unpaid and interest thereon. Existing law allows for liquidated damages equal to wages owed, in addition to interest, other penalties, and attorneys' fees. There is no information to show that the existing enforcement and protections of California's minimum wage laws are insufficient.
- **Assembly Bill 2187** (Employment: payment of wages)- This bill would create a new criminal



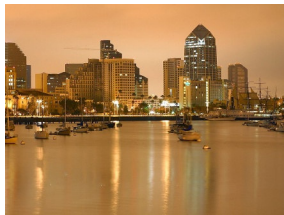
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prohibition against a person or an employer who, having the ability to pay, willfully fails to pay all wages to an employee who has been discharged or who has quit within 90 days of the date of the wages becoming due. The bill contains an exemption for instances in which the employee's entitlement to unpaid wages is disputed by the employer in a civil action or proceeding by the Labor Commissioner unless there is a final judgment in favor of the employee. Waiting time penalties and defined timeframes for the payment of final wages currently exist in California law, as do mechanisms for enforcement of these obligations.

- **Assembly Bill 677 (Public works prevailing wages)**- Per the Governor's commentary, defining projects for renewable energy generating facilities serving school and community college districts as public works when the only public funds are those spent to purchase power produced is an unwarranted expansion of prevailing wage requirements into private works of improvement. Because the payment of prevailing wages results in higher costs, the bill may potentially reduce the number of renewable energy projects undertaken.
- **Assembly Bill 1213 (Employment of Persons with Disabilities)** - The Governor's message states that this bill would add the Superintendent of Public Instruction to the California Governor's Committee on Employment of People with Disabilities. While adding the Superintendent to the committee would offer another point of view for the committee, this measure would divert resources away from the State Department of Education in a time of fiscal crisis.
- **Assembly Bill 2468 (Lactation accommodation: workplace designation)**- This bill would allow a business to use the designation "Breast-Feeding Mother Friendly Worksite" on its promotional materials if the Labor Commissioner determines that the employer policy meets specified criteria. The Labor Commissioner would be required to post "Breast-Feeding Mother Friendly Worksites" on its website. Existing California law establishes protections for lactating mothers. This bill would do nothing to augment or improve these existing laws pertaining to a lactating mother's right to express milk in the workplace. Instead, the bill would create additional responsibility for the Labor Commissioner, without any indication that the new requirements are either warranted or necessary.
- **Assembly Bill 2773 (Civil Actions: costs)**- This measure would require an award of attorney's fees in all fair employment and housing cases even when nominal damages are awarded and even if the case was improperly filed in a court of unlimited jurisdiction. While there may be instances when an award of attorneys fees may be proper, this measure removes all discretion from a judge and encourages frivolous lawsuits.

Although more employment related bills were vetoed by the current Governor rather than signed, employers should not be surprised if they see some of these bills back on the *new* Governor's desk for signature in the future.



FUTURE SEMINARS

Disability Law Awareness: During Recruiting and Retention

Date: October 21, 2010 **Time:** 11:30am-1:00pm
Location: The Brigantine Restaurant, La Mesa **Spon-
 sor:** East County Personnel Association
Cost: Members \$30, Non-members \$35

Unemployment Insurance 101: Assessing and Responding to Claims for U.I Benefits

Date: January 12, 2011 **Time:** 8:30am-4:30pm
Location: TBD
Sponsor: Lorman Education Services
Cost: TBD
*Continuing education credits available: 8 hours of AIPB, 6.5 of CA
 MCLA, 1 hour of HRPD, 8 hours of NASBA and 8 hours of PACE*

Time Off: State and Federal Laws on Employee Leaves

Date: March 23, 2011 **Time:** 8:30am-4:30pm
Location: TBD
Sponsor: Lorman Education Services
Cost: TBD
Continuing education credits available, AIPB, HRCI, HRPD, CPE

**For more information about the seminar topics or agendas, please
 contact Elizabeth Koumas**

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