

Rynn & Janowsky, LLP

EMPLOYMENT LAW

NEWSLETTER

CALIFORNIA EMPLOYERS ARE SURE TO HAVE A "HANG-OVER" AS THEY "RING-IN" THE NEW YEAR WITH NO SHORTAGE OF NEW EMPLOYMENT LAWS TO IMPLEMENT AT THE WORKPLACE

NEW PAID FAMILY LEAVE

Paid Benefits to Employees: Provides disability compensation for any individual who cannot work due to the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child. The benefits are provided through additional employee contributions and not employer taxes or payments.

Key Provisions: (1) One week waiting period before workers can apply for the program; (2) Employers may mandate that employees use up to two weeks of unused vacation time before receiving paid leave; and (3) Payments are capped at six weeks over a 12 month period and at 55 percent of wages, up to an annually-adjusted maximum.

Application to Employers with Less than 50 Employees: All employees are eligible for benefits regardless of the size of the employer. This law does not require small businesses with less than 50 employees to hold a job open for an employee on leave. However, the new Sick Leave Conditions law discussed below steps into this void. It forbids any California employer with at least one employee to take adverse action (including discipline and discharge) against an employee for a leave of absence due to the sickness or injury of a family member, or birth, adoption, or foster care placement of a new child.

Effective Date: January 1, 2004 (temporary disability compensation benefits for leaves begin July 1, 2004), which gives employers time to revise handbooks and prepare for implementation. By the end of the calendar year in 2003, however, every employer's handbook and written policy should reflect the new paid family leave benefits. The Employment Development Department will provide employers with a notice informing workers of their disability benefits, which must be distributed to all new employees hired on or after January 1, 2004, and to each employee leaving on a temporary disability leave on or after July 1, 2004.

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NEW LAW PROHIBITS ADVERSE ACTION AGAINST EMPLOYEE EXERCISING HIS OR HER RIGHT TO FAMILY LEAVE

Sick Leave Conditions: Employers (both large and small) who provide sick leave to employees are prohibited from counting sick leave used to attend to an illness of a child, parent, spouse, or domestic partner as the basis for discipline, demotion, discharge, or suspension. Employers should immediately review their policies to make sure that they do not include family leave absences as part of an "absence control" policy.

Employee Remedies: An employee who can establish that he or she was fired, demoted, suspended, disciplined, or retaliated against because he or she used sick leave, for family leave purposes, or was prohibited from taking the sick leave will be entitled to legal and equitable relief (backpay and reinstatement).

Effective Date: January 1, 2003

NEW "BABY WARN" STATUTE EXTENDS PLANT CLOSING NOTIFICATION TO SMALLER EMPLOYERS

Coverage: The new statute modeled on the federal Worker Adjustment and Retraining Notification Act, or WARN, applies to any industrial or commercial facility that employees 75 or more people. The federal WARN Act, applies to employers with 100 or more employees.

Key Provisions: (1) Precludes employers from ordering a mass layoff, relocation, or termination involving 50 or more employees without providing 60 days written notice to the affected employees and specified government agencies; (2) No notice required if employer is actively seeking capital or business that would enable the employer to avoid or postpone a relocation or termination, and the employer reasonably and in good faith believed that giving the 60 days notice would preclude the employer from obtaining the capital or new business; (3) Employers that fail to provide the notice may be liable for back pay, benefits, penalties, attorney's fees and costs; (4) "Employee" is defined as a person employed by the employer for at least six of the last 12 months prior to the layoff notice date. (Employees who are employed in seasonal employment with the understanding that their employment was seasonal in nature, are excluded.)

Effective Date: January 1, 2003

EMPLOYEE ENTITLED TO INSPECT OR RECEIVE PHOTOCOPIES OF PAYROLL RECORDS WITHIN 21 DAYS OF REQUEST UNDER NEW LAW

Key Provisions: (1) Current and former employees must receive copies of payroll records (at cost), or be permitted to inspect records, depending upon employee's request, within 21 calendar days after request is made (employers should note the law applies to "payroll records," and *not* requests pertaining to personnel files); (2) Request of employee can be in writing or oral; (3) Employer subject to \$750 penalty for failure to comply; (4) Law allows employee to get injunction against employer to gain enforcement of request, if necessary.

Effective Date: January 1, 2003

NEW LAW PROHIBITS EMPLOYER FROM RETALIATING AGAINST EMPLOYEE WHO DISCLOSES WAGES OR DISCUSSES WORKING CONDITIONS

Key Provisions: (1) Employers cannot adopt policy prohibiting employees from disclosing or discussing wages with other employees or any other person; (2) Prohibits retaliation against employees who discuss or disclose working conditions or wages; (3) Exceptions under the law exist in the case of proprietary information, trade secret information, or other information subject to legal privilege (employer cannot declare that wages are trade secrets or proprietary information, and therefore should revise confidentiality agreements or policies that conflict with new statute).

Effective Date: January 1, 2003

ILLEGAL ALIENS ENTITLED TO BACK PAY UNDER NEW CALIFORNIA LAW

Key Provision: The new statute clarifies that the U.S. Supreme Court decision in *Hoffman Plastic Compounds Inc. v. NLRB* (2002) denying back pay to illegal aliens shall not apply to undocumented workers when it comes to enforcing California labor laws, civil rights and housing laws.

Effective Date: January 1, 2003

EMPLOYEES HAVE TWICE AS LONG TO FILE LAWSUITS AGAINST EMPLOYERS UNDER NEW STATUTE OF LIMITATIONS

Key Provision: The statute of limitations to sue for personal injuries has been increased from one year to two years, and therefore employees now have twice as long to bring claims such as defamation and intentional infliction of emotional distress lawsuits against employers.

Effective Date: January 1, 2003

A NEW BASIS FOR AGE DISCRIMINATION LAWSUITS IS ESTABLISHED

Key Provision: Employers cannot, on the basis of a person's age refuse to hire or employ the person, refuse to select the person for a training program leading to employment, bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions, or privileges of employment. The statute was enacted in response to the California Supreme Court's decision in *Esperg v. Union Oil Company of California*, where the Court upheld the right of Union Oil to have a policy that refused tuition reimbursement assistance program to employees over the age of 40.

Effective Date: January 1, 2003 (although may be applied retroactively).

MANDATORY BINDING ARBITRATION OF CONTRACT NEGOTIATIONS WITH FARMWORKER UNIONS

Key Provisions: The new statute requires growers and unions who have not signed a collective bargaining agreement to mediate their dispute. The mediator will be selected by the parties (by alternatively striking names) from a list of nine mediators. The Agricultural Labor Relations Board ("ALRB") must request this list from the California Mediation and Conciliation Service. If after 30 days of "mediation" the parties have still have not agreed on contract language, the "mediation" will become *binding arbitration*, with the so-called mediator *dictating the terms* of the contract that will bind the grower, its employees, and the union.

The ALRB may vacate an arbitrator's decision and a party may appeal to the courts only if there is substantial misconduct, such as corruption, by the mediator or the mediator imposed a provision that is not related to wages, hours, or working conditions.

Agricultural Employers Affected: The new laws only apply to (1) agricultural employers of 25 or more employees, (2) where the union has won an election that is certified by the ALRB, (3) there has never been a contract with the union, and (4) the employer has committed an unfair labor practice.

Effective Date: January 1, 2003

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