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## **2008 CALIFORNIA EMPLOYMENT LAW UPDATE**

### **Minimum Wage Increases**

Effective January 1, 2008, California's minimum wage increased from \$7.50 per hour to \$8.00 an hour. California Labor Code § 1182.12. San Francisco employers should note that the city's minimum wage is now \$9.36 an hour.

### **IRS Raises Mileage Reimbursement**

Under Rev. Proc. 2007-70, the standard business mileage reimbursement rate is increased to 50.5 cents per mile, effective January 1, 2008.

### **Itemized Pay Stub Statement**

Effective January 1, 2008, only the last four digits of an employee's social security number or an employee identification number other than a social security number may be shown on the itemized pay stub statement. California Labor Code § 226.

### **Earned Income Tax Credit (EITC) Information Act**

Effective January 1, 2008, Assembly Bill 650 requires all California employers that are required to provide unemployment insurance to employees to provide a new notice to employees along with their annual wage summaries (i.e. W-2 form or Form 1099). This notice must state that employees may be eligible for the EITC and must be hand delivered or mailed to employees within one week of when the annual wage summaries are provided. Employers may not satisfy this obligation by posting the notice on an employee bulletin board or delivering it through office mail.

### **Pharmacists/ Alternative Workweek Schedules**

California Senate Bill 812 creates a new California Labor Code § 1186.5, which clarifies that all California pharmacists are permitted to adopt alternative workweek schedules as provided by Industrial Welfare Commission (IWC) Wage Order 4. This code was created to resolve an ambiguity between two Wage Orders. Wage Order 4 governs pharmacists as a profession while Wage Order 7 governs the retail industry. Labor Code § 1186.5 expressly permits pharmacists employed in the mercantile industry under IWC Wage Order 7 to adopt the same alternative workweek schedules allowed by IWC Wage Order 4, including alternative workweeks that can be adopted by employees working in the health care industry.

### **Computer Professionals/ Over Time Pay**

Effective January 1, 2008, California Senate Bill 929 amends California Labor Code § 515.5, which creates an overtime exemption for certain highly skilled computer professionals. The amendment decreases the minimum hourly wage for application of the computer professional exemption from \$49.77 to \$36.00 per hour.

### **Expanded Workplace Violence Protections**

Effective January 1, 2008, California Assembly Bill 2695 extends the scope of an employer's right to seek workplace violence restraining orders on behalf of employees under Code of Civil Procedure § 527.8. Employers are now authorized to seek a temporary restraining order (TRO) and injunction to protect multiple worksites and that protect multiple employees. An employer may seek a TRO even if the employee who is directly threatened does not want to pursue a TRO if the employer reasonably believes there is a credible threat of violence against others in the workplace.

### **Unpaid Leave for Qualified Military Spouses**

California Assembly Bill 392, creates a new California Military and Veterans Code § 395.10, which requires employers with 25 or more employees to allow the husband or wife of a soldier to take up to 10 days of unpaid leave while their husband or wife is home during a qualified leave period. An employer can require written documentation of the leave.

### **Wireless Telephones- Vehicles**

Effective July 1, 2008, California Senate Bill 1613 would revise the California Wireless Telephone Automobile Safety Act of 2006 to make it an infraction to drive a motor vehicle while using a wireless telephone, unless that telephone is designed to allow hands-free operation, and is used in that manner while driving. The bill would provide that this prohibition does not apply to a person who is using the cellular telephone to contact a law enforcement agency or public safety entity for emergency purposes, or to an emergency services professional while he or she operates an authorized emergency vehicle, as specified.

### **Wireless Telephones- Under 18**

Under California Senate Bill 33, a person under the age of 18 is prohibited from operating a motor vehicle while using a wireless telephone, even when equipped with a hands-free device, or while using a mobile service device. The law provides an exemption for emergency purposes.

### **Workers Compensation**

Effective January 1, 2008, California Assembly Bill 338 amends Labor Code § 4656 to extend the temporary disability payment cap for most injuries from 104 compensable weeks within 2 years of the date of the first TD payment to 104 compensable weeks within 5 years of the date of injury. This does not change the cap, but an injured worker has a longer period of time in which to collect benefits.

### **New I-9 Form Required**

U.S. Citizenship and Immigration Services (USCIS) has issued a new Form I-9 that employers must use to verify employment eligibility of all newly hired employees and re-verifications. Current employees do not need to complete new forms, unless the employee's status needs to be re-verified on other grounds. After December 26, 2007, employers not using the new Form I-9 are subject to penalties. The new Form I-9 is available for download at: <http://www.uscis.gov/files/form/i-9.pdf>.

## FEDERAL LEGISLATION

### **National Defense Authorization Act for FY 2008 (NDAA)**

On January 28, 2008, the President signed HR 4986, into law, creating new Family and Medical Leave Act of 1993 (FMLA) provisions regarding injured members of the armed forces. The new provisions are effective immediately. The amendment permits an employee to take up to 26 workweeks of leave to care for an injured or ill member of that employee's immediate family who is a "covered service member" in the military. Another provision that is not yet effective will allow an employee to take up to 12 workweeks of leave FMLA leave for "any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty in the Armed Forces in support of a contingency operation." This second provision will become effective when the Secretary of Labor issues final regulations defining "any qualifying exigency." National Defense Authorization Act for FY 2008 § 585, Pub. L. 110-181.

## RECENT CALIFORNIA CASE DECISIONS

### **Tip-pooling Arrangements**

There are strict rules for tip-pooling arrangements under California Labor Code § 351, which states that an employer or its agents cannot share tips intended for hourly workers. On March 21, 2008, a San Diego County judge ruled that Starbucks must pay a statewide class of about 120,000 employees \$86 million plus interest for unlawfully allowing shift supervisors to share tips with non-supervisor baristas. The case was brought under California's unfair competition law, Business and Professions Code §17200. This is a reminder that owners, managers or supervisors may not share in tips, even if they perform some of the duties of an hourly worker. *Chou v. Starbucks*, GIC 836925.

### **No Pay for On-Call Time**

On March 18, 2008, a California Court of Appeal held that employees, such as apartment managers, who are required to live on site are not entitled to compensation for time they spend being available to respond to emergencies. Residential employees are only entitled to compensation for the time they spend actually performing their duties (i.e., responding to emergency calls), even if they are required to remain on site while on call. The court noted a distinction between those employees who choose to live on the premises but are not required to do so and those employees who are required to live on site. *Isner v. Falkenberg Gilliam & Associates, Inc.*, 2008 Cal.App. LEXIS 370, Cal.App.2d Dist.

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The 2008 California Employment Law Update should not be construed as legal advice or legal opinion on any facts or circumstances. The contents are intended for general information purposes only. We recommend that you consult counsel concerning your own situation and any specific legal questions you might have.