

NEW LAWS AFFECTING BUSINESSES IN CALIFORNIA

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A number of new laws were either recently enacted or come into effect on or before January 1, 2009 which relate to business, employment and property. A few of the pertinent statutes follow. Please consult legal counsel or other relevant professionals if you have any questions as to how these new laws and regulations may affect your business.

NEW FEDERAL LAWS

The Virginia Graeme Baker Pool and Spa Safety Act

This bill purportedly increases the safety of public swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, and educates the public about pool and spa safety, among other purposes. Specifically, the law requires all “public pools and spas” be equipped with anti-entrapment drain covers by **December 19, 2008**. This is significant for property and homeowner association managers as the law includes in the definition of “public” pools those used in apartment complexes and multi-family residential housing projects (i.e. homeowner associations). Thus, those doing business in property and/or condo management should ensure their clients are in compliance with this federal law.

ADA Amendments Act of 2008

President Bush recently signed into law the ADA Amendments Act of 2008 (“ADAAA”), which expands the protections of the Americans with Disabilities Act (“ADA”). In short, the ADAAA is intended to overturn a series of United States Supreme Court decisions that limited the scope of the ADA’s coverage. However, California employers generally will not be affected by the ADAAA because the Fair Employment and Housing Act remains more protective of employees than even the amended ADA. However, for employers with operations in other states, the passage of the ADAAA is a significant development.

NEW AND AMENDED CALIFORNIA LAWS

AB 10: Computer Software Employee Exemption for Overtime Is Changed

This law amends Labor Code section 515.5, which exempts certain employees in the computer software field from the state’s overtime laws. Prior to the amendment, only employees paid \$36 per hour for every hour worked could qualify for the exemption. The new law provides that employees who meet the other requirements for the exemption may be paid an annual salary of not less than \$75,000 (paid at least once a month in a monthly amount of not less than \$6,250) rather than by the hour. The minimum compensation requirements will continue to be adjusted annually based on the Consumer Price Index. Employers who believe their employees may qualify for the exemption should carefully review the requirements detailed in section 515.5. As with all other overtime exemptions, the liability for mis-classification is substantial and may

include various penalties, interest and attorneys' fees. This law is already in effect.

AB 1394: Improved Protection of Trademark Rights

This law imposes stronger penalties against those who traffic in fake products, including auto parts, prescription drugs and children's toys.

AB 2050: Smoke Detectors and Water Heater Bracing Required for Manufactured Homes

Starting January 1, 2009, all used mobile homes and manufactured homes that are sold must have an operable smoke alarm in each sleeping room (whereas prior law only required one smoke detector per manufactured home). If the manufactured home was manufactured on or after September 16, 2002, the smoke alarm must comply with the federal Manufactured Housing Construction and Safety Standards Act. If the manufactured home was manufactured before September 16, 2002, the smoke alarm (which can be battery-powered) must be installed in terms of its listing and installation requirements.

AB 2052: Tenant Victimized by Domestic Violence Can Terminate Tenancy

Beginning September 27, 2008, a tenant can terminate a tenancy upon giving a 30-day written notice to terminate, if the notice also informs the landlord that the tenant or a household member has been a victim of domestic violence, sexual assault, or stalking as defined. The tenant must attach to the notice a copy of a temporary restraining order, emergency protective order, or police report issued within the last 60 days. The tenant is also entitled to a proration of the last month's rent if, within those last 30 days, the tenant vacates and the landlord re-rents the premises to a new tenant. This law is currently set to expire on January 1, 2012, unless extended.

AB 2075: Wage Claim Releases

This law modifies California Labor Code section 206.5, which already prohibits an employer from requiring a release of a claim for wages due or to become due unless payment has actually been made. In other words, an employer cannot condition payment of wages to an employee on condition of a signed release, nor can an employee waive any wages owed. Assembly Bill 2075, in addition to revising other sections, adds subsection (b), which defines "release" to include "requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false." This is an important development for employers who require employees to certify their hours worked before receiving their paychecks. Employers that have adopted such a practice must ensure the reported hours are accurate and that employees have the opportunity to correct their time when appropriate. Furthermore, the revisions make any violations under this statute a misdemeanor. This law becomes effective on January 1, 2009.

AB 2181: Workplace Injury Reporting

A.B. 2181 makes changes to the way that reports of occupational injury or illness are filed. The Division of Workers' Compensation ("DWC") is charged with publishing a new form for this purpose. Employers will be required to report injuries/illnesses on the form, and the insurer (or self-insured employer) will then have to report the information electronically to the DWC.

AB 2738: Protects Subcontractors In Residential Construction Projects

This bill, which takes effect January 1, 2009 (and is not retroactive) significantly changes the defense and indemnity obligations which construction subcontractors must provide to general contractors and builders of residential construction projects. The new law, which is heavily in favor of subcontractors, can be confusing and many smaller general contractors may not be aware of the new requirements. The law is complex and has a myriad of provisions. To best understand the new obligations, it is recommended you consult legal counsel and/or your insurance professional.

AB 2949: Abandoned Animals

California has once again placed a burden on landlords for tenants' failures. As of January 1, 2009, if a tenant abandons a "live animal" on the property, the landlord (or lenders who have foreclosed and now own the property), must take charge of it and notify the animal control department to retrieve the animal. The worst part is that animal control can place a lien on the property for the cost to retrieve the animal.

SB 28: Cell Phone Ban Now Extends to Text Messaging

Beginning January 1, 2009, text-based communications (including emails) are illegal while operating a motor vehicle. The new law carries the same penalties for using a cell phone without a hands-free device. The new law has an important impact for employers whose employees regularly use cell phones or text based messaging in the course and scope of their employment. All employers should consider updating their employee handbooks to advise their employees of this new law and reminding them that a violation of the law while in the course and scope of employment is a violation of company policy.

SB 940: Temporary Service Employees

This new law modifies Labor Code section 201.3, and changes payroll practices applicable to "temporary service workers" (including those companies who provide or hire "temps"). As modified, section 201.3 defines a "temporary services employer" as "an employing unit that contracts with clients or customers to supply workers to perform services for the clients or customers" and performs certain listed functions (note however, that "temporary services employer" does not include any of the following: (a) a bona fide nonprofit organization that provides temporary service employees to its clients; (b) a farm labor contractor, as defined in subdivision (b) of Labor Code section 1682; or (c) a garment manufacturing employer). If your company meets the definition under this modification, there are several new rules regarding when an employee must be paid, mostly depending on the nature of the employment length and type of employment. You should review the statute and consult legal counsel if you have any questions. Companies providing temporary employees to their clients should ensure the client is paying the temporary employee in accordance with the new requirements.

SB 1420: Nutritional Information Requirement For Restaurants Only Applies to "Chains"

Chain restaurants in California will have to display calorie counts with each menu item -- the first state law of its kind in the nation. The bill was signed at a Chili's Bar and Grill. The new

law only applies to restaurants with 20 or more locations in California. Brochures must be provided to consumers containing nutritional information including the number of calories and grams of saturated fat. Starting in January 2011, all menu boards and menus must include the calories for each item.

SB 1448: Fine For Posing As Real Estate Agent

This bill increased the fine for engaging in acts without a required real estate license from \$10,000 to \$20,000.

SB 1461: DRE License Number Must Be On First-Contact Materials

California's real estate agents must disclose their Department of Real Estate ("DRE") license numbers on all solicitation materials intended to be the first point of contact with consumers. Examples include business cards, stationery, advertising flyers, and other materials designed to solicit the creation of a professional relationship between a licensee and consumer. Excluded from the law, however, are advertisements in print or electronic media, "for sale" signs, and classified rental ads reciting the address or phone number of the rental property. The DRE may adopt regulations to clarify the first-contact materials covered under this new requirement. This bill also requires agents' license numbers on real property purchase agreements. Note: this bill does not take effect until July 1, 2009.

Civil Code Section 1747.09

This existing section of the California Civil Code is amended at subsection (a), effective January 1, 2009, to prohibit a merchant from printing more than the last 5 digits of the credit card account number or the expiration date upon any receipt retained by the merchant, (signed or not signed by the cardholder), which is printed at the time of the purchase, exchange, refund, or return.

Workplace/Employment Posters

Regulators are cracking down with fines up to \$17,000 for not posting all 16 required notices conspicuously where all employees and applicants can see them—even if you have only one employee. These notices include your Workers' Comp benefits, pay day schedule, emergency contacts and more.

Changes to the 2009 workplace posters include a change to the Equal Employment Opportunity poster, which was amended in August 2008. Also, the Employment Development Department's Notice to Employees covering UI, SDI and PFL has required changes for 2009. The Federal Occupational Safety & Health Administration (OSHA) announced the availability of new employer posters in 2007, but the change does not affect California employers. California employers who display a Cal/OSHA poster are not required to display the federal agency poster. The 2009 workers' compensation pamphlet has updated rates relating to temporary disability payments. In 2008, the EDD's Paid Family Leave Pamphlet and State Disability Insurance Pamphlet were updated. Also, in 2008, employers were required to post the new federal minimum wage notice and the insert to the FMLA notice regarding military leave amendments.

All California employers must post both the federal and state minimum wage posters.

However, California employers must pay no less than the California minimum wage, which is higher than the federal rate at \$8.00 per hour.

Remember that employment posters should be displayed anywhere that all employees can easily read them, such as a break room, common hallway, payroll office or other common location. In addition, you must display several of the posters (polygraph protection, and state and federal anti-discrimination posters) where job applicants can read them. Also, the law requires that the required posters be placed in each company location (i.e. office or facility) which the company maintains.

BILLS VETOED BY THE GOVERNOR AND THEIR IMPACT ON BUSINESSES

Governor Schwarzenegger vetoed several bills this year, some of which benefit employers and some of which do not. For instance, a bill which would have limited an employers' liability for discriminatory pay practices (AB 437) to 180 days prior to the filing of the complaint with the Department of Fair Employment and Housing, was vetoed.

AB 2279 was also vetoed. This bill, if enacted into law, would have required employers to "reasonably accommodate" any employee treating a recognized disability with marijuana (i.e., medical marijuana use). While future attempts at this provision are expected, employers currently may continue to legally deny employment based on positive drug tests for marijuana, even if the employee or prospective employee has a prescription for medical marijuana use or a recognized disability. Please note, however, that even though this bill was vetoed, employers are still required to adhere to "fair treatment" laws in hiring practices with respect to medical or physical disabilities.

Employers currently may require applicants or employees to submit to "credit checks." AB 2918 would have removed that ability except in very narrow circumstances.

SB 840 would have created a single-payer healthcare system in California, funded in part by employer contributions.

Currently, the Department of Fair Employment and Housing is limited to a cap of \$150,000.00 when awarding damages to an employee against an employer. AB 2874 would have lifted that cap.

SB 1583 would have imposed substantial penalties on consultants (except for legal counsel) who knowingly advise an employer to treat an individual as an independent contractor to avoid employee status.

AB 3063 would have expanded California's background check restrictions to prohibit employers from asking applicants about certain criminal convictions.

SB 1661 would have specified that an individual who quit or was discharged as a result of taking baby-bonding leave under California's paid family leave law would be considered to have left the job with good cause, for purposes of qualifying for unemployment benefits.

FUTURE LEGISLATION OR CASE LAW: AREAS TO WATCH

A number of employment-related bills never made it to the Governor's desk this year; however, we may see them again. These include a number of proposals relating to California's rest break and meal period requirements; an increase in the civil penalties that may be assessed against employers who fail to comply with the lay-off notice requirements under the Cal-WARN law; and a requirement that employers provide paid sick leave to their employees.

One important case, Brinker v. Superior Court, is currently before the California Supreme Court and likely won't be decided until 2009. This case involved attempts to create a class action for 60,000+ employees and claimed that employers were failing to ensure their employees were actually taking state-mandated rest and meal breaks. On appeal, the denial of class certification was upheld based on that court's interpretation that California law only requires employers to make the break periods available and that, if any employee voluntarily chooses not to take the break, the employer has not committed a violation of wage and hour laws. Our state Supreme Court will now decide this issue and is expected to render a decision interpreting the meal and rest break period requirements for California employers. Pending that decision, it is recommended that California employers not only provide rest and meal break time but require their employees to take the breaks.

RECAP OF LABOR SPECIFIC LAWS FROM 2008

Labor Code Section 226(a)(7): Social Security Number on Paychecks

Pursuant to Labor Code §226 (a) (7), beginning January 1, 2008, only the last four digits of an employee's social security number may be shown on paychecks or other similar documents.

The above information is general in nature and does not completely cover the subject areas. For specific questions regarding your particular claim, email Nick Campbell, partner at Green & Campbell, LLP at nick@gdclawyers.com. [Green & Campbell, LLP limits its practice areas to business, construction and real estate law.](#)

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