

2002

## 2002 Legislative Summary

Assembly Committee on Labor and Employment

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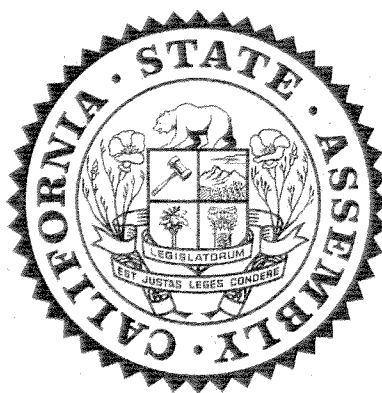
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# ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

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## *2002 LEGISLATIVE SUMMARY*

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October 15, 2002

Dear Friends:

As Chair of the Assembly Committee on Labor and Employment, I am proud to submit this annual report summarizing legislation the Committee heard and voted on during the 2002 legislative year. The Committee heard many significant labor and employment measures this year including bills to statutorily mandate an alternative dispute resolution process for farm laborers, index the minimum wage, and provide severance pay and lay off notification to California's working men and women. Additionally, the Committee held several invaluable and incisive informational hearings covering such weighty topics as federal intervention in the West Coast port dispute to the establishment of the new Labor and Workforce Development Agency.

While great legislative strides were made in the enactment of bills creating new laws and lending enforceability to existing laws, we have much work in store for us in the upcoming session. Beginning in January, new bills will be introduced, and I strongly encourage all interested persons to participate in the Committee's hearing process. Such involvement is vital to our work in developing sound labor and employment relations policy for the people of California.

The report briefly describes the year 2002 bills. We have also included for your information the Governor's veto messages. For the full text of all versions of any bill, committee analyses, and history including votes, please go to the Assembly's web page at [www.assembly.ca.gov](http://www.assembly.ca.gov) and click on "legislation." If you need additional information, please contact me or the Committee staff at (916) 319-2091.

Sincerely,

A handwritten signature in black ink that reads "Paul Koretz".

Paul Koretz, Chair  
Assembly Committee on Labor and Employment

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**Assembly Committee on Labor and Employment  
2002 Legislative Summary**

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## **Assembly Committee on Labor and Employment 2002 Legislative Summary**

### **AB 325      Reyes      Farmworker protection**

This bill would prohibit a farm worker from being required to cash a paycheck at a location designated by a farm labor contractor, grower, or agricultural employer, or being charged a fee for doing so. Additionally, this bill would assign misdemeanor penalties for wrongful conduct and increase penalties for charging employees transportation costs to and from the job site.

*Status: Vetoed by Governor Davis.*

### **AB 567      Koretz      Farmworker hand weeding tools**

AB 567, sponsored by the California Rural Legal Assistance Foundation, would require the provision and use of long-handled tools for the jobs of weeding, thinning and hot-capping in agricultural operations. This bill would prevent the current practice of agricultural workers weeding without tools in stooping, kneeling or squatting positions. Use of short-handled hoes in agriculture for weeding, thinning and hot capping has been prohibited in California for over 25 years. This prohibition was put in place to prevent debilitating back injuries caused by working in a stooped position. Unfortunately, some agricultural employers circumvent this prohibition by requiring their employees to weed without tools. Certain crops (including strawberries) and cultural practices are exempt from the provisions of this bill.

*Status: Dead bill, Senate Labor & Industrial Relations Committee.*

### **AB 925      Aroner      Employment of persons with disabilities**

This bill would require the California Health and Human Services Agency and the Labor and Workforce Development Agency to create a sustainable, comprehensive strategy to accomplish various goals aimed at bringing persons with disabilities into employment. Additionally, the bill would require the Governor to rename the existing California Governor's Committee on Employment of Disabled Persons, the "California Governor's Committee on Employment of People with Disabilities," would require the committee to be established in the Labor and Workforce Development Agency, and would specify the membership and duties of the committee. The bill would also require the committee to make grants to counties and local workforce investment boards in order to develop local strategies for enhancing employment opportunities for people with disabilities, and to fund comprehensive local and regional benefits planning and outreach programs to assist persons with disabilities in removing barriers to work. This bill would also require each local workforce investment board to establish at least one comprehensive one-stop career center and would impose various requirements related to ensuring that those one-stop centers provide universal access to services pursuant to the federal Workforce Investment Act of 1998 for persons with disabilities. The bill would also require that the California Workforce Investment Board and local workforce investment boards include persons with disabilities.

*Status: Chapter # 1088, Statutes of 2002.*

**AB 1087      Calderon      Electricians: Apprenticeships and certification**

This bill establishes a date certain for specified electricians who have met standards for training and competency to be certified, and requires the State to issue certification cards. Apprentices in state or federally approved programs are exempt. Permits all electricians covered by the newly enacted certification program to have three years within which to be certified. Exemptions narrow the scope of the certification to high voltage operations. Requires a report to the Legislature from the Division of Apprenticeship Standards (Division) on the status of electrician certification by January 1, 2004.

*Status: Chapter # 48, Statutes of 2002.*

**AB 1131      Frommer      Apprenticeship agreements: remedies**

This bill restricts state funding of apprenticeship training programs to those programs which have been approved by the Division of Apprenticeship Standards of the State Department of Industrial Relations.

*Status: Chapter # 11, Statutes of 2002.*

**AB 1309      Goldberg      Employment: Reports on gender and ethnicity**

Makes it an unlawful practice for employer, labor organizations and apprenticeship programs, as specified, to fail to annually file a report with the Department of Fair Employment and Housing (DFEH), regarding the gender, ethnicity and job classification, the composition of its employees, membership and participating apprentices.

*Status: Vetoed by Governor Davis.*

**AB 1448      Maddox      Prevailing wage laws: violations**

This bill repeals two sunset dates in current law to ensure that formerly operative provisions of existing law do not become operative once more. This further ensures that that a prime contractor will not become liable for violations by a subcontractor of specified duties related to certified payroll records and overtime pays on public works projects.

*Status: Chapter # 28, Statutes of 2002.*

**AB 1599      Negrete McLeod      Age discrimination in employment**

Broadens legal prohibition on employment discrimination based upon age, making all discrimination based upon age of individuals 40 and over in employment unlawful, except where expressly provided by law. Responds to the recent appellate court decision in *Esberg v. Union Oil Co.*, wherein the plaintiff was denied participation in the employer's educational assistance program because of his age.

*Status: Chapter # 525, Statutes of 2002.*

**AB 1649      Goldberg      Gender discrimination: employment and housing**

This bill expands the definition of "sex" in the Fair Employment and Housing Act to include gender for anti-harassment and discrimination purposes. The bill would permit employers to require employees to comply with reasonable workplace appearance, grooming, and dress standards consistent with state and federal law. It is intended to stop employment and housing discrimination based on failure to conform with gender stereotypes, protecting those who are teased or harassed because of the way they do or do not exhibit the traits stereotypically associated with their sex at birth. Such traits may include a person's personality, clothing, hairstyle, speech, mannerisms, or demeanor; they may also include secondary sex characteristics such as vocal pitch, facial hair, or the size and shape of a person's body. According to the bill's supporters, some of the most frequent victims of this sort of discrimination are transgender and transsexual individuals.

*Status: Dead bill, Senate Floor.*

**AB 1676      Koretz      Minimum labor standards: database of violations**

AB 1676 requires the Labor Commissioner to develop and maintain a statewide database of labor standards violations. The Department of Industrial Relations has issued a report documenting the need for the data base and findings that without it the Department is unable to generate sufficient and timely information to accurately track enforcement actions. Additional findings indicated that the Labor Commissioner's enforcement program is limited due to the inability to share information internally within the Department and with other federal and state agencies that have joint agreements with the Division of Labor Standards Enforcement.

*Status: Dead bill, Senate Appropriations Committee.*

**AB 1677      Koretz      Working conditions**

This bill would have required the Labor Commissioner to appoint the statutorily established advisory committee on the garment industry by no later than January 31, 2003. Additionally, the bill would have prohibited employers from charging their employees a fee for cashing an employee's payroll check and would have required that public employees who operate commercial motor vehicles be subject to the same regulations regarding meal and rest periods as their private employee counterparts.

The bill would have also provided that existing law relating to meal periods does not apply to an employee in the wholesale baking industry who is subject to an Industrial Welfare Commission Order and who is subject to a collective bargaining agreement, as specified. Finally, the bill would have defined the term "hours worked", as used in regulations and orders and would have provided that the requirements relating to working hours do not apply to an employee who is a licensed physician or surgeon, with specific requirements.

*Status: Vetoed by Governor Davis.*

**AB 1934      Corbett      Telephone corporations: background security checks**

This bill requires telephone corporation contractors and vendors to perform background checks on employees if their employees would have access to the telephone network or the customer premises, and the employee would perform activities involving installation, service, or repair of the telephone network. This bill would not require background checks to be conducted for temporary workers performing emergency functions resulting from a natural disaster or an emergency threatening loss of service.

*Status: Chapter # 183, Statutes of 2002.*

**AB 2118      Dickerson      Cal-OSHA: volunteer firefighters**

Delays applicability of the Occupational Safety and Health Act to volunteer firefighters until January 1, 2004, except as to claims that arose between January 1, 2002 and the effective date of this bill.

*Status: Chapter # 368, Statutes of 2002.*

**AB 2189      Koretz      Displaced contract transit employees**

This bill would require contractors and subcontractors, as defined, who are awarded contracts or subcontracts to provide public transit services, to retain, for a period of 60 days, certain employees who were employed to perform essentially the same services by the previous contractor or subcontractor. This bill would require that employees retained under the bill's provisions be offered continued employment for that 60-day period if their performance is satisfactory. This bill would authorize an employee who was not retained in accordance with the bill's provisions, or his or her agent, to bring an enforcement action.

*Status: Vetoed by Governor Davis.*

**AB 2195      Corbett      Workplace protections**

Extends existing protections against adverse employment actions against victims of domestic violence who need time off from work, to victims of sexual assault. Responds to reports from rape crisis centers that victims of sexual assault cannot pursue criminal and medical assistance due to leave limitations at their place of work. This bill is intended to remove a major obstacle to assisting law enforcement in bringing violent criminals to justice, and to utilizing supportive medical and counseling services.

*Status: Chapter # 275, Statutes of 2002.*



**AB 2242      Koretz      Minimum wage indexing**

This bill would adjust the hourly minimum wage on January 1, 2003, and annually thereafter, to maintain employee purchasing power. The automatically adjusted minimum wage would be calculated using the California Consumer Price Index, as specified. Additionally, this bill would provide that its provisions may not be construed to preclude an increase in the minimum wage greater than the formula would provide or to result in a reduction in the minimum wage. Finally, this bill provides that the Industrial Welfare commission may not increase the minimum wage in 2003 and may not begin another review of the minimum wage until January 2013.

*Status: Dead bill, Senate Floor.*

**AB 2319      Cogdill      Public schools: prevailing wages**

This bill exempts employers with contracts for school facility construction or modernization from paying their employees prevailing wages.

*Status: Dead bill, Assembly Labor & Employment Committee.*

**AB 2412      Diaz      Employee access to payroll records**

Lends enforceability to existing rights of employees to inspect and copy their payroll records, by requiring that an employer who receives a request from a current or former employee to inspect or copy his or her payroll records shall comply as soon as practicable, but in any event within fifteen business days.

*Status: Chapter # 933, Statutes of 2002.*

**AB 2509      Goldberg      Labor standards: local jurisdictions**

This bill specifically permits local jurisdictions to apply labor standards that they have established to economic development projects that are funded by the state, but administered at the local level, so long as those standards do not explicitly conflict with, and are not explicitly preempted by, state law.

*Status: Chapter # 298, Statutes of 2002.*

**AB 2590      Cogdill      Prevailing wages**

Provides that the Director of the Department of Industrial Relations (Director) shall, in addition to any existing regional wage determinations, determine a basic trade's general prevailing wage for the Central Valley region. This bill appears to be intended to lower the wages earned by workers employed on public works projects in the Central Valley.

*Status: Dead bill, Assembly Labor & Employment Committee.*

**AB 2752      Alquist      Discrimination against injured workers**

Provides that it is an unlawful employment practice for an employer to subject an employee to adverse employment action if the employee participates in protected activities, including refusal to work under dangerous or hazardous conditions. Increases penalties for a violation of these provisions.

*Status: Vetoed by Governor Davis.*

**AB 2827      Diaz      Apprenticeship programs: graduation rate study**

This bill would require Department of Industrial Relations to conduct a study on the graduation rates of approved apprenticeship programs, report the results to the Legislature by December 1, 2003, and post the results on the Department's website. The study would include an analysis of the graduation rates of women and minorities.

*Status: Vetoed by Governor Davis.*

**AB 2837      Koretz      Safety in employment**

This bill strengthens reporting and investigation of fatal and serious workplace injuries and strengthens enforcement in cases where there are criminal violations of safety laws. Under the current system, fatal and serious workplace injuries are supposed to be immediately reported to Cal/OSHA. Cal/OSHA is responsible to investigate such cases and to refer cases to prosecutors where criminal conduct may be involved. However, the current system is failing to achieve timely reporting, adequate investigation and timely referral of appropriate cases to prosecutors. This bill is designed to address these deficiencies.

*Status: Chapter # 885, Statutes of 2002.*

**AB 2845      Goldberg      Safety in employment**

Requires the Occupational Safety and Health Standards Board to revise ergonomic standards designed to reduce repetitive motion injuries in the workplace on or before July 1, 2003.

*Status: Vetoed by Governor Davis.*

**AB 2895      Shelley      Private employment: working conditions**

This bill creates a right for workers to disclose information about working conditions. It prohibits an employer from requiring an employee to refrain from disclosing information about the employer's working conditions, prohibits an employer from requiring a waiver that purports to deny an employee the right to disclose such information, and makes unlawful any type of job discrimination against an employee for disclosing such information.

*Status: Chapter # 934, Statutes of 2002.*

**AB 2927      Wiggins      State Job Training Coordinating Council**

This bill is a technical cleanup measure for the Unemployment Insurance Code, eliminating references to the now obsolete State Job Training Partnership Act (JTPA) and instead includes those programs receiving funds under the Workforce Investment Act.

*Status: Dead bill, Senate Floor.*

**AB 2928      Koretz Private security guards  
(Labor provisions amended out of the bill August 2002.)**

**AB 2929      Kehoe      Wage garnishment**

This bill streamlines procedures for garnishment of wages for overpayment of unemployment compensation and disability benefits. It would authorize the state to use registered or certified mail to serve an earnings withholding order on an employer, in order to collect disability or unemployment compensation overpayments the state made to an employee of that employer.

*Status: Chapter # 890, Statutes of 2002.*

**AB 2942      Koretz      Employee wages and working hours: violators**

AB 2942 is designed to improve coordination among state agencies responsible for enforcing wage and hour laws and tax laws to better protect workers and taxpayers from employers who cheat workers out of their wages and who fail to pay taxes. This bill would require the Labor Commissioner to develop and implement a set of standards that, if met by an employer, will trigger recommendation for an audit by appropriate state tax authorities of employers in violation of statutes relating to employee wages and working hours. After July 1, 2003, this bill would require the Labor Commissioner to notify appropriate state tax authorities each time the set of standards are met by an employer, to recommend that employers who meet the set of standards be audited, and to create a list of employers who have met the set of standards, with certain information concerning those employers.

*Status: Dead bill, Senate Labor and Industrial Relations Committee.*

**AB 2957      Koretz      Employment: Mass layoffs, relocations, and terminations**

This bill would preclude employers from ordering a mass layoff, relocation, or termination, as defined, of an industrial or commercial facility employing a prescribed number of people, without first giving 60 days' notice to affected employees and specified government agencies. This bill would further provide for civil penalties against an employers who fails to provide the required notices. The existing federal WARN law does not cover enough work sites and does not require that notices go to key job training providers.

*Status: Chapter # 780, Statutes of 2002.*

**AB 2985      Labor Committee      Private employment: wages and hours**

This bill would direct the Labor and Workforce Development Agency to contract with an independent research organization, as specified to study the enforcement of wage and hour laws, including the identification of federal and state resources that may be utilized to enforce wage and hour laws. This bill also provides that the study shall be completed by December 31, 2003, and paid from existing Department funds, not to exceed \$50,000.

*Status: Chapter # 662, Statutes of 2002.*

**AB 2986      Labor Committee      Employment safety**

This bill would require the Division of Occupational Safety and Health to conduct continuing research to improve the occupational safety and health of employees. This bill would provide that the Division's research shall include, but not be limited to, research toward the improvement of the occupational safety and health of employees in the construction industry.

*Status: Dead bill, Assembly Appropriations Committee.*

**AB 2987      Labor Committee      Payment of wages: penalties**

This bill would increase the amounts of fines and penalties for specified violations of the Labor Code. Additionally, this bill would increase the amount of the authorized fine for specified misdemeanors where an amount is not specifically prescribed, to \$5,000.

*Status: Vetoed by Governor Davis.*

**AB 2988      Labor Committee      Cal-OSHA targeted inspection and consultation program**

This bill is a technical cleanup measure for AB 1655 (Hertzberg), of 1999. AB 1655 repealed the provisions of law which sunset the Targeted Inspection and Consultation Program (TICP) on January 1, 2000. AB 1655 repealed the sunset, but in doing so, did not repeal the sunset on a separate statute in the Revenue and Taxation Code, which authorized the Franchise Tax Board (Board) to collect delinquent fees for the TICP. This bill corrects that inadvertent omission and restores the Board's pre-existing authority.

*Status: Vetoed by Governor Davis.*

**AB 2989      Labor Committee      Wages: severance pay**

This bill would grant severance pay entitlement to the employees of an employer who relocates or terminates a qualifying industrial or commercial facility, under specified conditions, or who lays off employees of such a facility. The amount of the severance pay would be one week's pay for each 12 months of employment by the employee in that establishment. The bill would authorize affected employees or, alternatively, the Labor Commissioner, to bring an action for payment of severance pay. In addition, the bill would authorize the Labor Commissioner, in any investigation or proceeding in this connection, to examine the books and records of an employer who is subject to the requirements described above.

*Status: Vetoed by Governor Davis.*

**AB 2990      Labor Committee      Employment: retaliation**

This bill would, except where there is a bona fide seasonal layoff or reduction in force affecting the majority of employees, create a rebuttable presumption affecting the burden of proof that the provisions of existing law were violated if a person discharges, demotes, suspends, or reduces the hours of work or pay of an employee within 90 days after the employee has exercised his or her rights under the Labor Code.

*Status: Vetoed by Governor Davis.*

**AB 2991      Labor Committee      Department of Industrial Relations: duties**

This bill would require the Department to report to the Legislature on at least a quarterly basis to identify the total amount of wages, penalties, and assessments referred to the Franchise Tax Board for collection, the amount collected from each employer, and the costs of collection.

*Status: Dead bill, Assembly Appropriations Committee.*

**ACR 236      Salinas      Agricultural Worker Health & Safety Commission**

This resolution resolves that an Agricultural Worker Health and Housing Commission (Commission), consisting of ten members and funded solely through private sources, be established. This resolution requires the commission to report to the Legislature regarding the agricultural industries ability to compete in the global marketplace and the Commission's commendations of how to improve the housing and health conditions of agricultural workers.

*Status: Resolution Chapter # 178 of 2002.*

**AJR 36      Wiggins      Project labor agreements**

A resolution of the California Legislature calling upon the President and Congress of the United States to fully support the current practice of project labor agreements and overturn Executive Order 13202, and any other attempt to curtail the use of project labor agreements.

*Status: Dead bill, Senate Desk.*

**AJR 62      Lowenthal      Labor negotiations: dockworker dispute**

This measure would declare the opposition of the California Legislature to any action by the President and the Administration that would impose a federal injunction against waterfront workers, remove waterfront workers from the coverage of the National Labor Relations Act, or send military personnel to west coast docks to assist in a lockout of waterfront workers.

*Status: Dead bill, Assembly Floor.*

**SB 278          Machado          Public works project: Water Security, Clean  
Drinking Water, Coastal and Beach Protection  
Act of 2002.**

Requires that the body awarding a contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Act) to adopt and enforce a labor compliance program.

Please note that the Committee did not hear **AB 1506 (Wesson) Chapter # 868, Statutes 2002**. The bill should be referenced here, as it is similar to SB 278. This bill requires an awarding body choosing to use funds for a public works project, from either the Kindergarten-University Public Education Facilities Bond Act of 2002, or the Kindergarten-University Public Education Facilities Bond Act of 2004, to initiate and enforce, or contract with a third-party to initiate and enforce, a labor compliance program.

*Status: Chapter # 892, Statutes of 2002.*

**SB 360          Machado          State employees: wages**

Provides that wages earned by state employees for labor performed in excess of the normal work period is paid no later than the next regular payroll period. Civil penalty and misdemeanor provisions for violation of this requirement which presently apply to private employers would be made applicable to the state.

*Status: Vetoed by Governor Davis.*

**SB 371          Escutia          Courts: interpreters**

This bill would establish the Trial Court Interpreter Employment and Labor Relations Act setting forth provisions and procedures governing the employment and compensation of certified and registered trial court interpreters, and court interpreters pro tempore, employed by the trial courts.

*Status: Chapter # 1047, Statutes of 2002.*

**SB 972          Costa          Public works: prevailing wages**

This bill creates an exemption from prevailing wage requirements for privately owned residential projects with some public funding in certain narrow circumstances. Unless otherwise required by a public funding program, the construction, expansion or rehabilitation of privately-owned residential projects is not subject to prevailing wage requirements if one or more of the following conditions are met: the project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the homebuyers ("sweat equity"), or the project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than \$25,000, or assistance is provided to the household as either mortgage assistance, down payment assistance, or for the rehabilitation of a single-family home. Local ordinances requiring payment of prevailing wages on housing projects are expressly not preempted by this bill.

*Status: Chapter # 1048, Statutes of 2002.*

**SB 1027      Romero      Overtime requirements: nurses and health care employees**

This bill prohibits compulsory overtime for registered nurses or other specified health care industry employees after the conclusion of the employee's applicable daily work schedule and after 40 hours in a workweek, except during a federal, state, or county declaration of emergency, or if an unanticipated and nonrecurring catastrophic event occurs in the community served by that health care facility.

*Status: Dead bill, Senate Floor.*

**SB 1236      Alarcon      Labor and Workforce Development Agency**

This bill implements the Governors Reorganization Plan #1 of 2002, which created a Labor and Workforce Development Agency in state government. The Labor and Workforce Development Agency is to consist of the State Department of Industrial Relations, the State Department of Employment Development, the Agricultural Labor Relations Board, and the Workforce Development Board.

*Status: Chapter # 859, Statutes of 2002.*

**SB 1419      Alarcon      Personal service contracts: schools**

This bill would establish standards for the use of personal service contracts for all services currently or customarily performed by classified school employees in school districts and community college districts. It would restrict the use of personal services contracts for the purpose of achieving cost savings, permitting contracts only if certain conditions are met and would add other restrictions unless certain conditions are met.

*Status: Chapter # 894, Statutes of 2002.*

**SB 1422      Burton      Private Investigator Act: licensure requirements**

Exempts from joint-labor management committees and their employees from the private investigator act (PIA). Specifically, the bill exempts from the PIA, any joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Act), or its employees, where either the committee or the employee is performing a function authorized by the Act. Additionally, the bill clarifies that functions include, but are not limited to, monitoring public works projects to ensure that employers are complying with federal and state public works laws.

*Status: Chapter # 895, Statutes of 2002.*

**SB 1466      Alarcon      Contracts for labor or services**

This bill provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various laws, or encourages others to do so, is guilty of a misdemeanor and subject to civil penalties. It also provides a rebuttable presumption that a person or entity that enters into a voluntary written agreement with specified criteria does not violate the proposed law.

*Status: Vetoed by Governor Davis.*

**SB 1471      Romero      Sick leave**

This bill provides that an employer's absence control policy that counts sick leave taken due to the illness of a child, parent, spouse or domestic partner of the employee, as an absence that may lead to or result in discipline, discharge, demotion, or suspension, is a per se violation of the law relating to sick leave to attend to family. Specifies that an employee working under such a policy is entitled to appropriate legal and equitable relief pursuant to existing law relating to sick leave to attend to family.

*Status: Chapter # 1107, Statutes of 2002.*

**SB 1591      Burton      Occupational Safety and Health Standards Board**

Requires the Employment Development Department (EDD) to establish standards and criteria regarding construction industry jobs under the Workforce Investment Act (WIA), successor to the Job Training and Partnership Act (JTPA), and prohibits the establishment of Welfare-to-Work positions in the construction industry, under specified circumstances.

*Status: Chapter # 1142, Statutes of 2002.*

**SB 1592      Burton      Agricultural labor: mediation & arbitration**

Provides for a contract dispute resolution process between agricultural employers (employers) and labor organizations (unions) certified as the exclusive bargaining agents of agricultural employees (employees).

*Status: Dead bill, Assembly Floor.*

**SB 1736      Burton      Agricultural labor disputes: binding arbitration**

This bill provides for a binding arbitration based contract dispute resolution process for collective bargaining disputes between agricultural employees and their employers. The bill provides for mediation and conciliation services if the parties do not reach agreement within 90 days and applies the existing binding arbitration procedures for backstretch employees to agricultural employees.

*Status: Vetoed by Governor Davis.*



**SB 1818      Romero      Backpay awards**

This bill makes various legislative findings related to the applicability of California's employment, civil rights, housing and health laws to persons regardless of immigration status. This bill was introduced in response to the 2002 United States Supreme Court decision, that the federal Immigration Reform and Control Act of 1986 (IRCA) precluded back pay awards to undocumented workers, even though they might be victims of unfair labor practices, because the workers were never legally authorized to work in the United States [Hoffman Plastic Compounds, Inc. v. NLRB 122 S. Ct. 1275 (2002)].

*Status: Chapter # 1071, Statutes of 2002.*

**SB 1886      Torlakson      Elevators and other conveyances**

This bill establishes a comprehensive statutory scheme to regulate elevator safety. It revises existing law relating to elevator inspections and permits, to additionally cover other conveyances including, in part, escalators, platform and stairway chair lifts, dumbwaiters, material lifts, moving walks and automated people movers. This bill also extends inspection and permit requirements to these other types of conveyances, and authorizes the Occupational Safety and Health Standards Board to adopt emergency regulations to implement its provisions. Elevators and other conveyances in private residences are excluded from coverage under this bill.

*Status: Chapter # 1149, Statutes of 2002.*

**SB 1945      Kuehl      Discrimination: statute of limitations**

Extends the one-year deadline for filing a verified complaint with the State Department of Fair Employment and Housing (DFEH), alleging violations of the Ralph Civil Rights Act, to a period of time, not to exceed one year from the date the person aggrieved by an alleged violation, becomes aware of the identity of a person liable for the alleged violation, but in no case exceeding three years from the date of the alleged violation.

*Status: Chapter # 490, Statutes of 2002.*

**SB 2066      Burton      Higher education labor relations**

This bill requires the University of California (UC), for all new facilities operational after January 1, 2003, to show good cause before it utilizes a service contractor for work traditionally performed by university employees who are represented in bargaining units. Good cause for the use of a service contractor would require a showing by UC that either, the contract is for a new function, and state law specifically mandates or authorizes the performance of the work by service contractors; the services contracted cannot be performed satisfactorily by UC employees; the services are incidental to a contract for the purchase or lease of real or personal property; the UC purposes cannot be accomplished through the utilization of UC employees; a service contractor is required because a conflict of interest prevents a UC employee from performing the services; the service contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by UC in the location where the services are to be performed; the service contractor will conduct training

courses for which appropriately qualified instructors employed by UC are not available; or, the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation by UC employees would frustrate their purpose.

*Status: Vetoed by Governor Davis.*

### **Other bills of Interest Not Heard by Labor Committee**

#### **SB 1156      Burton      Agricultural labor: collective bargaining & mediation**

Provides for a mediation based contract dispute resolution process between agricultural employers (employers) and labor organizations (unions) certified as the exclusive bargaining agents of agricultural employees (employees). Provides for review process by the Agricultural Labor Relations Board (ALRB) and the Supreme and Appellate Courts of California.

*Status: Chapter # 1145, Statutes of 2002*

Please note that the committee did not hear **AB 2956 (Wesson)**, Chapter # 1146, Statutes of 2002, the companion vehicle to this bill. The bill should be referenced here as it provides for a five year sunset of SB 1156, caps the number of cases a party may bring before the ALRB at 75, within a five year period, and provides for alternate procedural protocols for new and renewed demands to bargain.

## **Governor's Vetoes**

### **AB 325 (Reyes)**

SEP 30 2002

To Members of the California State Assembly:

I am returning Assembly Bill 325 without my signature.

There are proposals in this measure that I fully support and other proposals that I oppose. For example, it is certainly reasonable to prohibit any persons misrepresenting farmworkers into believing that their employment or employee benefits will be jeopardized unless they pay a fee for transportation to and from the worksite.

It is also reasonable to prohibit a farm labor contractor or agricultural employer from requiring their employees to cash paychecks at designated locations.

On the other hand, it is not reasonable to tell an agricultural employer that he or she cannot charge a fee for cashing that paycheck. Furthermore, there are other burdensome requirements in this otherwise well-intentioned measure that prevent me from signing this bill.

Sincerely,

GRAY DAVIS

### **AB 1309 (Goldberg)**

SEP 30 2002

To Members of the California State Assembly:

I am returning Assembly Bill 1309 without my signature.

This bill would require certain employers, labor unions and apprenticeship programs to file annual workforce composition reports with the Department of Fair Employment and Housing (DFEH).

Although the bill has merit, it requires an employer to submit specific information on the race, sex, and job classifications of its workforce but does not provide for the confidentiality of these records. Similar information reported under federal requirements is kept confidential. Unfortunately, this bill does not contain that same protection.

In addition, given the fiscal problems facing our state and the budget reductions imposed by the Legislature, I cannot sign a measure that will increase the workload for the DFEH when they are making every effort to focus their limited resources on investigating allegations of discrimination and civil rights violations.

Sincerely,

GRAY DAVIS

**AB 1677 (Koretz)**

SEP 30 2002

To Members of the California State Assembly:

I am returning Assembly Bill 1677 without my signature.

This bill would prohibit employers from charging their employees a fee for cashing an employee's payroll check, and makes changes to wage, hour and meal period requirements under specified circumstances. In addition this measure requires the Labor Commissioner to appoint members to a Garment Manufacturing Advisory Committee by January 1, 2003.

Employees are currently protected from the practice of employers receiving money from the payroll checks of their employees. Additionally, certain provisions of this bill concerning meal and rest periods for public transit employees may be too costly and overly burdensome to public transit agencies. The term "hours worked" has already been adequately defined in California labor law by the IWC.

Finally, the Labor Commissioner has already complied with the mandate of this bill to appoint members to a Garment Manufacturing Advisory Committee by January 2003.

For these reasons, I must veto this bill.

Sincerely,

GRAY DAVIS

**AB 2189 (Koretz)**

SEP 28 2002

To Members of the California State Assembly:

I am returning Assembly Bill 2189 without my signature.

This bill would require a contractor or subcontractor that is awarded a contract for public transit services to retain for a period of 60 days the employees of the contractor or subcontractor that previously held a contract to service the same sites.

Although I signed a nearly identical bill presented to me last year that provided transitional employment for janitorial workers, I am unable to do so on this occasion. Unlike the problems that plague workers in the janitorial industry, workers that labor under public contracts are not subject to the exploitation that motivated me to sign the legislation for janitorial workers. In addition, local governments have the authority and option of setting higher wage and benefit requirements for contract bids for public transportation when necessary to meet the needs and the best interests of their communities.

Sincerely,

GRAY DAVIS

**AB 2752 (Alquist)**

SEP 28 2002

To Members of the California State Assembly:

I am returning Assembly Bill 2752 without my signature.

This bill would expand the protection of workers who experience employment discrimination because they have exercised their rights to report hazardous working conditions or have refused to perform unsafe work.

I greatly appreciate the importance of protecting workers from retaliation when they refuse to perform unsafe work or report dangerous working conditions to their employers or to government agencies and others who share the charge of keeping our workplaces safe and injury-free. There are currently in law significant protections for these workers. Moreover, the measure could reduce the Department of Industrial Relations' ability to properly enforce those protections.

For these reasons, I am returning this bill without my signature.

Sincerely,

GRAY DAVIS

**AB 2827 (Diaz)**

SEP 28 2002

To the Members of the California Assembly:

I am returning Assembly Bill 2827 without my signature.

This bill would require the Department of Industrial Relations (DIR) to conduct a study of the graduation rates of various kinds of apprenticeship programs administered by the Department.

It is my understanding that DIR already has this data. Under the current budgetary constraints facing the State, undertaking a study of existing data can take resources away from other priority programs within DIR. Therefore, in place of signing this bill, I am directing DIR to release this data in a timely manner.

Sincerely,

GRAY DAVIS

**AB 2845 (Goldberg)**

SEP 30 2002

To Members of the California State Assembly:

I am returning Assembly Bill 2845 without my signature.

This bill requires the Occupational Safety and Health Standards Board to adopt revised standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion by July 1, 2004.

California, as the only state in the nation that is successfully enforcing a regulation to address repetitive motion injuries, has proven itself to be a leader in the area of ergonomics. Our

regulation is the result of significant debate, study and public comment, and represents a concerted effort to balance legitimate, competing concerns regarding repetitive motion injuries.

The Occupational Safety and Health Standards Board has received a petition requesting that it amend California's standard on repetitive motion injuries and I believe that the Board's consideration of that petition will allow for the best evaluation of the existing regulation as well as the relative merits of amending it. In an effort to allow that process to occur, I am returning this bill without my signature.

Sincerely,

GRAY DAVIS

**AB 2988 (Labor Committee)**

SEP 29 2002

To Members of the California State Assembly:

I am returning Assembly Bill 2988 without my signature.

This bill would add a new subsection (g) to Labor Code 62.9 to provide specific statutory authority and a mandate for an agreement to be entered into by the Department of Industrial Relations and the Franchise Tax Board for the collection of delinquent assessments for the Cal/OSHA Targeted Inspection and Consultation Fund.

This legislation is not necessary in that even after the repeal of the authority formerly conferred by Revenue and Taxation Code 19290.1, the Department has maintained in effect the agreement with FTB for the collection of delinquent assessments. Section 2 of the bill confirmed that this legislation was merely declaratory of existing law and that general authority exists even in the absence of a specific statute to formulate an agreement by DIR and FTB for collection of delinquent assessments.

Sincerely,

GRAY DAVIS

**AB 2989 (Labor Committee)**

SEP 29 2002

To the Members of the California Assembly:

I am returning Assembly Bill 2989 without my signature.

This bill would entitle employees to severance pay under specified conditions in layoff situations at an industrial or commercial facility that has employed 100 or more persons at any time during the preceding 12-month period. The bill would require the employer to pay severance to laid off employees if severance pay was provided in the past three years to exempt employees.

While I fully understand the plight of workers faced with the loss of employment, I believe that the enactment of this bill at this juncture would prove to be counterproductive to achieving the broader goal of a full recovery of California's economic health. Businesses usually resort to layoffs when they have fallen upon hard economic times. Forcing already troubled businesses to fund severance payouts may accelerate overall job loss by increasing layoffs and business closures.

Sincerely,

GRAY DAVIS

**AB 2990 (Labor Committee)**

SEP 28 2002

To Members of the California State Assembly:

I am returning Assembly Bill 2990 without my signature.

This bill would only aggravate a practice by some employees, who, upon learning they are being investigated for misconduct, report groundless allegations of misconduct by their supervisors or co-workers. The purpose of fabricating a prophylactic retaliation claim is to forestall the employer from bringing an adverse action. This practice by disgruntled employees will have a chilling effect on a supervisors' willingness to legitimately discipline problem employees.

AB 2990 creates a significant, irreconcilable conflict with the burden of proof and presumption of innocence in criminal proceedings. This bill provides that those violations of



Labor Code 98.6(b) may be punished as a misdemeanor. The presumption of retaliation created by this bill conflicts with the constitutional presumption of innocence to which every criminal defendant is entitled.

Sincerely,

GRAY DAVIS

**SB 360 (Machado)**

SEP 28 2002

To Members of the California State Senate:

I am returning Senate Bill 360 without my signature.

This Administration strongly believes that State employees should be paid on a timely basis, and we have worked diligently with the State Controller to accomplish that.

This bill is unnecessary. Federal law (Fair Labor Standards Act) already provides for the payment of wages, including overtime, prior to the following pay period. The State is also subject to Labor Code Section 207, which requires regular pay days.

Sincerely,

GRAY DAVIS

**SB 1466 (Alarcon)**

SEP 29 2002

To Members of the California State Senate:

I am returning Senate Bill 1466 without my signature.

This bill provides that any person or entity that enters into a contract for labor or services for construction, farm labor, garment manufacturing, janitorial services, or security guard services, that knows or should know that the contract does not provide sufficient funds to comply with various local, state, and federal labor laws, violates state law.

Over the last 4 years I have signed several bills in an effort to protect California's most vulnerable workers including: 1) AB 633 (Steinberg 1999) Garment Industry enforcement; 2) AB 423 (Hertzberg 2001) Farmworker Contractor Labor Standards; 3) AB 471 (Hertzberg 2001) Regulations and Arbitration for Backstretch Workers; and 4) SB 20 (Alarcon 2001) Displaced Janitor Protections. I also recently signed SB 1241 (Figueroa 2002) which will expedite the registration process for private security guards.

All of these measures provide specific benefits and protections and we need to give those laws time to work.

For these reasons, I must veto this measure.

Sincerely,

GRAY DAVIS

**SB 1736 (Burton)**

SEP 30 2002

To Members of the California State Senate:

I am returning Senate Bill 1736 without my signature.

I have signed AB 2596 (Wesson) and SB 1156 (Burton) which provide a mechanism to bring to resolution unresolved labor disputes between farmworkers and growers.

In light of my actions on those bills, I am returning SB 1736 without my signature.

Sincerely,

GRAY DAVIS

**SB 2066 (Burton)**

SEP 30 2002

To the Members of the California State Senate:

I am returning Senate Bill 2066 without my signature.

This bill would prohibit the University of California from using service contractors at new facilities that open or commence operations after January 1, 2003, if the service to be provided by the contractor is currently performed by employees represented by an employee organization, unless specified conditions are met.

This bill would constrain the University of California from contracting out for several vital services not just at the new Merced campus, but at any newly constructed facility. Specifically, this bill would apply not only to new buildings in Merced, but arguably to any new hospital that replaces, rather than retrofits, an existing facility. These hospital construction projects have been ongoing for many years, and I cannot support changing the rules now as they near completion. The important U.C. Institutes for Science and Innovation could also be delayed by the restrictions in this bill.

Moreover, this bill would place greater contracting out restrictions on the University than existing law places on the State. For example, it would not allow the University to contract out for legitimate cost savings. Additionally, the constitutionality of mandating this procedure without a vote of the Regents is questionable

I am directing the Secretary of the Labor and Workforce Development Agency, Steve Smith, to convene a meeting with the University and the proponents of this measure to see if there is any common ground toward addressing these issues.

Sincerely,

GRAY DAVIS