

2003

## 2003 Legislative Summary

Assembly Committee on Labor and Employment

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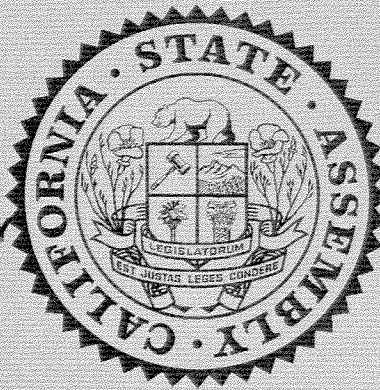
# ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

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## *2003 LEGISLATIVE SUMMARY*

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Assembly  
California Legislature



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LORIE ERICKSON  
COMMITTEE SECRETARY

October 20, 2003

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 2003 legislative year. The Committee heard many significant labor and employment measures this year including bills to increase penalties for violations of the Labor Code, strengthen protections against unlawful harassment and discrimination, restrict the debilitating use of hand-weeding, and increase private enforcement of labor laws. Additionally, the Committee conducted a timely and valuable informational hearing on the issue of mass layoffs in California.

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 year. In January, new bills will be introduced and two-year bills will be pursued. 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 2003 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 2003 Legislative Summary**

### **AB 76          Corbett          Employment discrimination**

This bill clarifies language in the Fair Employment and Housing Act (FEHA) to ensure that under state law employers may potentially be liable for sexual harassment committed against their workers by clients, customers and other third parties if they knew or should have known of the harassment, and failed to take immediate and appropriate corrective action to stop the harassment. This bill effectively repudiates the reasoning of a recent court of appeal decision in Salazar v. Diversified Paratransit, Inc., 103 Cal. App. 4th 131 (2000).

*Status: Chapter # 671, Statutes of 2003.*

### **AB 89          Bogh          Prevailing wages: payroll records: digitized copies**

Revises the form by which certified payroll records may be made available for purposes of examining prevailing wage compliance. Specifically, this bill provides that a certified copy of an employee's payroll record includes a printout of a digitized image of an original payroll record, if the printout is provided by a bank or a financial institution that scanned the original payroll record.

*Status: Assembly Committee on Labor and Employment, two- year bill.*

### **AB 98          Koretz          Employment: meal and rest periods**

This bill is a companion to administrative action occurring before the Industrial Welfare Commission (IWC). The IWC is currently considering an amendment to one of its wage orders to provide for meal and rest periods for commercial drivers employed by public agencies. AB 98 clarifies that, if the IWC adopts or amends such a wage order, it may establish a collective bargaining exemption for employees covered by a valid collective bargaining agreement.

*Status: Chapter # 327, Statutes of 2003.*

### **AB 196          Leno          Discrimination**

Expands the definition of sex to include gender, actual or perceived, for purposes of defining unlawful employment discrimination. This bill broadens the scope of sex discrimination prohibited under the Fair Employment and Housing Act (FEHA) to include the employee's gender. Gender is defined as the employee's actual sex, or the employer's perception of the employee's identity, appearance, or behavior, even if these characteristics differ from those traditionally associated with the employee's sex at birth. The bill provides explicitly that the ability of employers to adopt reasonable workplace appearance, grooming and dress standards is not affected, provided that an employer allow an employee to appear or dress consistently with the employee's gender.

*Status: Chapter # 164, Statutes of 2003.*

**AB 223      Diaz      Employment: attorney's fees**

This bill overturns a recent holding of the California Supreme Court regarding the awarding of attorney's fees and costs following the appeal of a Labor Commissioner decision or award to the trial court, and restores the state of the law prior to this decision. In Smith v. Rae-Venter Law Group, 29 Cal. 4th 345 (2002), the court held that an appealing party is unsuccessful unless the court judgment is more favorable to the appealing party than the Labor Commissioner's award. AB 223 specifies that an employee is successful in the appeal of an award so long as the employee recovers an amount greater than zero.

*Status: Chapter # 93, Statutes of 2003.*

**AB 244      Maze      Overtime**

This bill would have eliminated various statutory requirements relating to hours worked, daily overtime, alternative workweek scheduling, meal periods, and days of rest. Among other things, AB 244 would have eliminated the statutory requirement that work in excess of eight hours a day be compensated at one and one-half times the employee's regular rate of pay. In addition, AB 244 would have eliminated certain exemptions for employees covered by a valid collective bargaining agreement and would have instead provided that the entire chapter of the Labor Code dealing with hours of work does not apply where there is any collective bargaining agreement respecting the hours of work of the employees. This bill also would have eliminated the statutory requirement to provide meal periods to employees.

*Status: Dead bill, Assembly Committee on Labor and Employment.*

**AB 274      Koretz      Employment retaliation**

AB 274 creates a rebuttable presumption that certain adverse employment action taken against an employee within 60 days after the employee has exercised his or her rights under the Labor Code is retaliatory in violation of existing law. This bill provides that the presumption is inapplicable if the discharge or layoff is the result of the completion of a limited term work project, the employee was hired with the understanding that the employment was limited to that term, and the limited term employment is not designed or created to avoid application of the presumption. This bill is a reintroduction of AB 2990 (Koretz), which was vetoed by Governor Davis last session, and makes changes to address the Governor's previous veto message.

*Status: Vetoed by the Governor.*

**AB 276      Koretz      Penalties for Labor Code violations**

This bill increases the fines and civil penalties for specified violations of the Labor Code, and earmarks a portion of the increased penalties to a fund within the Labor and Workforce Development Agency dedicated to educating employers about their obligations under state labor law.

*Status: Chapter # 329, Statutes of 2003.*

**AB 324      Diaz      Public works: labor compliance programs**

This bill codifies state regulations requiring a labor compliance program on a public works project be approved by the Director of the Industrial Relations, and modifies the formula that provides reimbursement for increased costs associated with labor compliance programs pursuant to the School Bonds Acts.

*Status: Chapter # 834, Statutes of 2003.*

**AB 330      Parra      Working conditions**

This bill exempts from the meal period requirement in existing law, certain employees in the wholesale baking industry who are covered by a valid collective bargaining agreement.

*Status: Chapter # 207, Statutes of 2003.*

**AB 446      Matthews      State employees: wages**

This bill, sponsored by the California State Employees Association, requires wages earned by state employees with regularly designated paydays to be paid on those paydays. Permanent intermittent state employees that do not have regularly designated paydays shall be paid within five days after the close of the payroll period. AB 446 also makes penalties for failure to pay wages of state employees inapplicable where the failure to pay is due to earthquake, fire, or other public calamity, or if the California Constitution or other law prevents the payment of wages in a timely manner.

*Status: Vetoed by the Governor.*

**AB 570      Chu      Garment manufacturers: fees**

Authorizes the Labor Commissioner to distribute the full amount of a specified fund to pay garment workers for damages or relief awarded as a result of violations of Industrial Welfare Commission orders or the Labor Code.

*Status: Assembly Appropriations Committee, two-year bill.*

**AB 572      Yee      Employment: working conditions**

This bill would have provided 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 perform unsafe work. AB 572 also would have increased penalties for violations of these provisions and would have revised certain complaint and investigation procedures of the Division of Labor Standards Enforcement (DLSE).

*Status: Dead bill, Senate Appropriations Committee.*

**AB 643      Mullin      Occupational Safety and Health Standards Board**

This bill revises procedures for appointing members to the Occupational Safety and Health Standards Board. Specifically, this bill limits the period Standards Board members may hold office to 60 days after the expiration of their term, if no successor is appointed. Under current law, a member whose term has expired may continue to hold office indefinitely, until a successor is appointed. The bill also authorizes the Senate Committee on Rules and the Speaker of the Assembly to appoint a successor to fill a vacancy if the governor fails to appoint a successor within 60 days of the vacancy and requires that the two labor representatives on the Standards Board be from the field of organized labor.

*Status: Vetoed by the Governor.*

**AB 796      Bogh      Occupational safety and health: fines**

This bill establishes a procedure for police and fire departments to apply for a refund of civil or administrative penalties imposed against them for violations of laws related to safety in employment. Such procedures exist under current law for educational entities and institutions.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 807      Leno      Public works: prevailing wage**

Specifically, this bill provides that an employer may only credit pension or other contributions against their prevailing wage obligations when the employer makes such contributions on at least a quarterly basis. It is unclear under existing law whether contractors on public works projects are required to pay the health and welfare portion of prevailing wage in a timely manner, and that accordingly, some contractors have been found skirt their health and welfare payment responsibilities. This bill is intended to address the problem by providing that employers are unable to credit the health and welfare portion of their prevailing wage obligations if they pay on at least a quarterly basis.

*Status: Chapter # 839, Statutes of 2003.*

**AB 852      Lieber      Prevailing wages: determinations**

This bill establishes a mechanism for the determination of prevailing wage rates on non-public works projects, where a public and private entity voluntarily agree by contract that the employees will receive prevailing wages on the project. Under this bill, the Director of the Department of Industrial Relations (DIR) is required to provide the requested wage rates in the order in which the requests were received and is only required to respond to the first 20 requests in any calendar year, unless funding is available.

*Status: Chapter # 343, Statutes of 2003.*



**AB 880      Diaz      Taxation: temporary employment agency contributions**

This bill imposes a 5% payroll on all temporary employment agencies in California, and requires revenues to be distributed to local governments throughout the state for health services, prevention of homelessness, affordable housing, and public safety services.

*Status: Assembly Appropriations Committee, two-year bill.*

**AB 1018      Nakanishi      School construction and modernization: prevailing wages**

Exempts new school facility construction or modernization projects from any requirement to pay local prevailing wages.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1028      Bermudez      California Apprenticeship Council**

This bill extends the authorization of the California Apprenticeship Council to adopt industry-specific training criteria for use by apprenticeship programs under its jurisdiction. Such authorization shall remain in effect until January 1, 2007 unless subsequent legislation deletes or extends that date. AB 1028 also declares legislative intent that the Department of Industrial Relations will encourage greater participation for women and ethnic minorities in apprenticeship programs.

*Status: Chapter # 842, Statutes of 2003.*

**AB 1061      Firebaugh      Employment Training Panel**

This bill seeks to enhance small business access to Employment Training Panel (ETP) programs and resources. Among other things, this bill requires ETP to annually update its three-year plan to include goals, operational objectives and strategies with respect to meeting the needs of small businesses. AB 1061 also declares legislative intent for ETP to continue efforts to assist aerospace and defense suppliers through workforce training.

*Status: Chapter # 844, Statutes of 2003.*

**AB 1064      Laird      Public transit district pension plans**

AB 1064 establishes requirements for public transit district pension plans that parallel requirements under federal law. Where the employees are represented by a labor organization or are members of a unit appropriate for collective bargaining, the plan must be maintained pursuant to a collective bargaining agreement. In addition, AB 1064 requires equal representation of labor and management on pension boards and requires any deadlock to be resolved through arbitration. Exempted from the requirements of this bill are plans with enrollment in CalPERS, a retirement system established pursuant to the County Employees Retirement Law of 1937, or a trust subject to ERISA. The requirements of AB 1064 also do not apply if the corresponding changes would require a vote of the electors pursuant to the California Constitution or where the membership of the governing board is directly elected by the voters.

*Status: Chapter # 845, Statutes of 2003.*

**AB 1093      Lieber      Living wage**

This bill would enact provisions known as the California Living Wage Act. This bill requires the state, and specified contractors and subcontractors that perform work under a contract for a state agency, to pay not less than a living wage to employees performing work under that contract. This bill would also authorize an employee to sue to recover unpaid wages, costs, and attorney's fees from a contractor or subcontractor. This bill would also require certain provisions to appear in a qualified contract and any subcontract to that qualified contract. Under this bill, "living wage" means \$10 per hour if the employee receives health insurance coverage, or \$12 per hour if the employee does not receive health insurance coverage. These amounts can be adjusted by the Department of Finance to reflect any increase in the California Consumer Price Index, or by an amount that may be determined annually as an adequate living wage standard by the Division of Labor Statistics and Research of the Department of Industrial Relations. This bill also provides various exemptions from the requirement to pay a living wage.

*Status: Vetoed by the Governor.*

**AB 1127      S. Horton      Workforce Investment Board**

This bill changes obsolete references to the Job Training Partnership Act and replaces them with references to the successor federal Workforce Investment Act of 1998. This bill also renames the State Job Coordinating Council as the California Workforce Investment Board and makes other technical, nonsubstantive and conforming changes to existing law.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1132      Koretz      Industrial homework**

This bill amends enforcement and appeal procedures following the confiscation of goods unlawfully manufactured in the home by establishing a procedure whereby the destruction and disposal of such goods does not require court authorization if there is no challenge to the confiscation. In most cases, alleged violators do not appeal the confiscation. The objective of this measure is to create a more efficient process by providing for an expeditious and inexpensive administrative appeal procedure.

*Status: Chapter # 214, Statutes of 2003.*

**AB 1133      Koretz      Collection of wage and hour judgments**

This bill establishes a penalty equal to the amount of the original judgment for wage and hour judgments that remain unsatisfied for six months after the judgment is final and the time to appeal has passed. Under AB 1133, the penalty is applied for each additional six-month period the judgment remains unsatisfied, but the penalty shall be applied no more than four times.

*Status: Vetoed by the Governor.*

**AB 1140      Cox      Public works: refuse hauling**

This bill would have repealed the provision of existing law defining "public works" for purposes of prevailing wage law to include the hauling of refuse from a public works site to an outside disposal facility.

*Status: Dead bill, Assembly Committee on Labor and Employment.*

**AB 1147      Houston      Public transit meal periods**

This bill exempts private employers that provide contracted services to public transit operators from the meal and rest period requirements of existing law. AB 1147 also declares legislative intent to remove any unnecessary or restrictive provisions on private transportation carriers providing cost-effective and vital services to public transit operators.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1223      McCarthy      Mass layoffs, relocations, and terminations**

This bill repeals existing law as added by AB 2957 (Koretz), which precludes employers from ordering a mass layoff, relocation, or termination, 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.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1243      Houston      Apprenticeship agreements**

This bill provides that certain provisions of state law relating to apprenticeships will not serve to invalidate specified federally approved apprenticeship programs or restrict the geographic eligibility for dispatch of apprentices.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1288      Lieber      Employment services; aliens**

This bill exempts charitable organizations offering employment services from the requirement to verify an individual's legal status or authorization to work prior to providing services.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1310      Dutton      Public works: prevailing wages**

This bill would have modified the methodology for determining the prevailing wage rate by requiring the Director of the Department of Industrial Relations to consider only the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works within the locality. AB 1310 would require that, if the rates do not constitute the rates actually prevailing in the locality, the Director shall consider data from the nearest labor market area. This bill also would have exempted from the requirements of prevailing wage law prefabrication work that is performed at permanent off-site facilities.

*Status: Dead bill, Assembly Committee on Labor and Employment.*

**AB 1344      Garcia      Prevailing wages; exclusions: real property transfers**

Creates an exclusion to prevailing wage requirements by excluding from prevailing wage requirements any project that is funded in whole or in part by a donation of a vacant parcel of real property zoned for affordable single or duplex housing units, by a city, county, or redevelopment agency to a nonprofit corporation.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1345      Reyes      On-air broadcast employees**

AB 1345 would enact the "Broadcast Industry Freedom of Contract Act" to prohibit the inclusion of specified term or clauses in employment contracts between broadcast employers and on-air employees. Specifically, this bill would prohibit clauses that require an employee to negotiate exclusively with an employer about future employment during the final 12 months of a contract. This bill would also make unlawful any clause that prohibits an employee from communicating or negotiating with a third party or entering into an agreement about future employment. Finally, AB 1345 would prohibit terms that impose any "right-of-first-refusal" or other obligations upon an on-air employee. An aggrieved party would be entitled to actual damages or \$5,000, injunctive relief, attorney's fees and costs. Similar language was amended into AB 135, which was held on the Senate Inactive File as a two-year bill.

*Status: Assembly Inactive File, two-year bill.*

**AB 1418      Laird      Labor: violations**

Establishes minimum penalties relating to violations of prevailing wage requirements, and requires the Contractors State Licensing Board (CSLB) to make information regarding specified contractors available on its Internet Web site. Specifically, this bill would require that, in addition to the \$50 maximum penalty per day, the penalty not be less than \$10 per day, unless the failure to pay the prevailing rate of per diem wages was a good faith mistake and was promptly and voluntarily corrected when brought to the contractor's or subcontractors's attention. This bill would also require the penalty not be less than \$20 per day for contractors and subcontractors with prior violations, and not be less than \$30 per day for willful violations.

*Status: Chapter # 849, Statutes of 2003.*

**AB 1421      Cogdill      Public works: prevailing wages**

This bill repeals many of the provisions of SB 975 (Alarcón) from last session which, among other things, redefined "public works" to include projects that are undertaken by private developers in cooperation with a public agency or a project that is bid by a public agency using a combination of public and private financing or assistance. AB 1421 also excludes "installation" from the definition of public works. In addition, this bill exempts from the requirements of prevailing wage law any public works project of a community facilities district located within a charter city that has established its own exemptions from the requirements of prevailing wage law.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1459      Houston      Labor standards: local jurisdictions**

This bill would repeal AB 2509 (Goldberg) enacted last session. AB 2509 authorized local jurisdictions to impose labor standards that are more stringent than those required by state law on projects and activities that receive state funding or assistance, so long as those standards do not conflict with or are preempted by state law. Existing law also prohibits state agencies from requiring local jurisdictions to refrain from applying local labor standards as a condition to receiving state funds or assistance.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1471      Haynes      Safety in employment**

Repeals AB 2837 (Koretz), which was signed into law in 2002. AB 2837 revised reporting and investigation procedures of workplace accidents resulting in serious injury or death, as well as the investigation and prosecution of criminal violations of those accidents. It also added civil and criminal penalties for failure to report accidents in order to address the lack of timely reporting of workplace accidents, problems in the investigation of accidents, and the need for early coordination with prosecutors.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1506      Negrete McLeod      Public works: projects funded by bonds**

This bill requires the body awarding the contract for a public works project financed with funds made available by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to adopt and enforce a labor compliance program related to the payment of prevailing wages. The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, if approved by the voters at the November 2004 general election, would authorize the issuance of \$9.95 billion for purposes of financing the planning and construction of a high-speed train system and associated rail improvements. AB 1506 also would specify that state administrative costs associated with the labor compliance programs would be supported as costs of the agency with responsibility for the administration of the bond program or the costs of construction.

*Status: Chapter # 851, Statutes of 2003.*

**AB 1529      Pavley      Labor Standards: Meal and rest periods**

This bill provides that the provisions of law pertaining to meal periods and rest periods for employees apply to nurses, medical center employees, and employees of health clinics, employed by a public institution that issues doctorate degrees in health care professions, subject to specified exceptions.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1536      Goldberg      Discrimination**

This bill streamlines Department of Fair Employment and Housing procedures required under existing law relating to service of complaint, service by private counsel, authority to award damages for emotional distress, and the authority to seek an injunction.

*Status: Chapter # 447, Statutes of 2003.*

**AB 1539      Houston      Prevailing wages: sole proprietorships**

This bill would exempt from the requirements of prevailing wage law any sole proprietorship whose only employee is the sole proprietor.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1551      Kehoe      Biotechnology employment and development**

Sets forth legislative findings and declarations that the San Diego biotechnology industry increasingly needs more biotechnology professionals of all levels that are familiar with industry like conditions for basic, applied, and translational research, training, and production, as provided. This bill would also state legislative findings and declarations that the San Diego Multiuse Biotechnology Training Center is being created to serve as an anchor and catalyst for the growth of biotechnology enterprise in the region, and to address the workforce needs of the biotechnology industry. This bill would additionally authorize various state and local entities, as specified, to enter into memoranda of understanding with the center to provide services, funding, and personnel.

*Status: Chapter # 628, Statutes of 2003.*

**AB 1582      Koretz et al      Abusive work environments**

This bill makes it an unlawful employment practice to subject an employee to an abusive work environment, as defined, and would specify that an employer is vicariously liable for a violation committed by its employee, but would prescribe certain affirmative defenses. The bill would also make it an unlawful employment practice to retaliate against an employee because the employee has opposed an unlawful employment practice under the bill or has made a charge, testified, assisted, or participated in an investigation or proceeding under the bill. The bill would specify that it is enforceable solely by a private right of action.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1643      Ridley-Thomas      Contract service providers**

This bill establishes a new classification for specified employment law purposes, in addition to existing classifications for "employee" and "independent contractor," for a "contract service provider." Proof of contractor provider status includes satisfactory proof that the business is a certified California small business, possesses a valid California business license or pays business taxes in the jurisdiction in which it is located, and has been in operation for two or more years.

*Status: Assembly Committee on Labor and Employment, two-year bill.*

**AB 1688      Goldberg      Car washes**

This bill regulates the industry of car washing and polishing by providing specific record keeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor Commissioner (LC) and pay a specified registration fee. Failure to register pursuant to these provisions carries a civil fine of \$100 for each calendar day of violation not to exceed \$10,000. These fines and registration fees would be deposited in the Car Wash Worker Restitution Fund and the Car Wash Worker Fund, which this bill would create, for disbursement by the LC, upon appropriation by the Legislature. This bill sunsets on January 1, 2007.

*Status: Chapter # 825, Statutes of 2003.*

**AB 1719      Labor Committee      Employment**

AB 1719 makes a number of changes to existing provisions of the Labor Code. First, this bill makes some follow-up changes to AB 2837 (Koretz) from last session to strengthen reporting and notification requirements concerning workplace accidents. Second, this bill cleans up language contained in the overtime exemption for licenses physicians to make it consistent with other exemption language. Third, this bill allows the California Apprenticeship Council to extend the period for electrician certification for two years, if it decides that it needs additional time. Finally, AB 1719 adds some clarifying language related to a workers' compensation carve-out for licensed jockeys. This language is consistent upon the passage of the workers' compensation reform package.

*Status: Chapter # 884, Statutes of 2003.*

**AB 1722      Labor Committee      Agricultural Labor Relations Board**

This bill requires the Governor to appoint two legal advisors for each member of the Agricultural Labor Relations Board upon recommendation of that members, to serve at the pleasure of the recommending board members and to receive a salary to be fixed by the board with the approval of the Department of Personnel Administration.

*Status: Assembly Labor and Employment Committee, two-year bill.*

**AB 1723      Labor Committee      Employment**

This bill requires the Employment Development Department to make available information relating to mass layoffs, relocations and terminations. AB 1723 also requires an employer to provide meal and rest periods established by any applicable statute, regulation or order of the Industrial Welfare Commission. This bill provides that this obligation is an independent duty and does not require an employee to assent to the provision of meal and rest periods. Finally, this bill specifies that the requirement of an additional hour of pay for failing to provide a meal or rest period is wage, which may be recovered by the employee in a civil action.

*Status: Senate Desk, two-year bill.*

**ACR 49      Cox      Legislation affecting business**

This resolution requests that members of the Legislature refrain from proposing legislation that hinders or restricts California businesses from operating or employing Californians in California, in an effort to make California more economically competitive. ACR 49 also makes legislative findings concerning the business climate in California.

*Status: Dead resolution, Assembly Committee on Labor and Employment.*

**AJR 39      Koretz/Mullin      Workplace safety and health**

This resolution makes declarations regarding federal enforcement of workplace health and safety laws and urges the President and Congress to strengthen protections for workers and improve coordination of enforcement activities.

*Status: Assembly Committee on Labor and Employment, two-year bill.*



**SB 75            Burton            Agricultural labor relations**

SB 75 amends provisions of existing law relating to mandatory retaliation and conciliation procedures for agricultural workers and employers. This bill eliminates the January 1, 2008 sunset date and provides that the 75 caseload limit applies only until January 1, 2008. In addition, this bill specifies the factors a mediator is allowed to consider when resolving disputes between an agricultural employer and a labor organization. SB 75 also authorizes the Agricultural Labor Relations Board to review a mediator's decision if a provision of the collective bargaining agreement set forth in that decision is arbitrary or capricious in light of the mediator's finding of fact.

*Status: Chapter # 870, Statutes of 2003.*

**SB 158            Alarcón            Displaced public transit employees**

This bill establishes a 10% bidding preference for public transit service contractors and subcontractors who agree to retain employees of the previous contractor for at least 90 days. However, the new contractor/subcontractor is authorized to pay alternate wages and provide alternate benefits. In addition, this bill authorizes the new contractor/subcontractor to retain fewer employees than the previous contractor, if necessary. SB 158 authorizes employees discharged in violation of the provisions of this bill to bring suit to recover reinstatement, back pay, benefits and attorney's fees and costs. In addition, a awarding body is required to terminate contract that has been substantially breached and that contractor is ineligible to bid or be awarded a contract for between one and three years, to be determined by the awarding body.

*Status: Chapter # 103, Statutes of 2003.*

**SB 179            Alarcón            Contracts for labor or services**

Provides that any person or entity that enters into certain contracts for labor or services, that knows or should know that the contract does not provide sufficient funds to comply with various laws, violates state law. The bill establishes a rebuttable presumption that a person or entity entering into such a contract for labor or services does not violate this bill's provisions if the labor contract or any material change to the labor contract is in writing, contained in a single document and meets certain requirements.

*Status: Chapter # 908, Statutes of 2003.*

**SB 197            Burton            Registered nurses: meal and rest periods: fines**

This bill subjects for-profit general acute care hospitals to treble civil penalties for violating meal or rest period requirements for registered nurses. Current law establishes a civil penalty of \$50 for the first violation and \$100 for subsequent violations.

*Status: Assembly Inactive File, two-year bill.*

**SB 360      Romero      Public works: prevailing wages: exclusions**

This bill extends the exemption deadline for certain residential and low income housing projects from the provisions of prevailing wage law. SB 975 (Alarcón) from last session exempted qualified residential projects, low-income housing projects and single family residential projects financed before December 31, 2003. This bill would extend those deadlines until December 31, 2004.

*Status: Assembly Labor and Employment Committee, two-year bill.*

**SB 478      Dunn      Victims of crime: work absences for judicial proceedings**

This bill requires that an employer allow an employee who is a victim of a crime, as defined, or certain persons who are related to a crime victim, to be absent from work in order to attend judicial proceedings related to the crime. This bill would prohibit an employer from discharging or in any manner discriminating against an employee, in compensation or other terms, conditions, or privileges of employment, including, but not limited to the loss of seniority or precedence, because the employee is absent from work pursuant to this bill, and would authorize the employee to file a complaint with the Division of Labor Standards Enforcement.

*Status: Chapter # 630, Statutes of 2003.*

**SB 534      Romero      Farmworker hand weeding**

SB 534, sponsored by the California Rural Legal Assistance Foundation and others, would require the provision and use of long-handled tools for 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. The use of short-handled hoes in agriculture was banned over 25 years ago. Unfortunately, some agricultural employers circumvent this prohibition by requiring their employees to weed without tools. This bill contains several exemptions, including where an employer can demonstrate that significant damage would result to the crops without the use of hand weeding. The provisions of the bill prohibiting hand weeding also would not apply to organic growers until January 1, 2006.

*Status: Assembly Inactive File, two-year bill.*

**SB 578      Alarcón      Public contracts: sweatshop labor**

This bill prohibits a state agency from contracting with a contractor or subcontractor that utilizes sweatshop labor or fails to satisfy an enumerated "Sweatfree Code of Conduct" regarding terms and conditions of employment. SB 578 builds on existing law which prohibits the state from contracting for foreign-made goods produced by forced labor, convict labor, child labor and other abusive practices. However, this bill extends such prohibitions and new requirements to domestic-made goods and the procurement or laundering of apparel, garments and corresponding accessories. SB 578 also requires the state to explore feasible and cost-effective monitoring measures to ensure compliance with its provisions.

*Status: Chapter # 711, Statutes of 2003.*

**SB 730          Burton          Prevailing rate of per diem wages: determinations.**

This bill provides specified time periods relating to the determination and appeal of prevailing wage rate and coverage determinations. Specifically, this bill requires the Director of the Department of Industrial Relations (DIR) to provide prevailing wage rates to an awarding body within 120 days of a request for the rates, and would require that any appeal of a wage rate determination be decided within 30 days. It also requires the Director of DIR to make determinations regarding whether a project is a public work under applicable law within 60 days of a request, and would require that any appeal of a coverage determination be decided within 30 days. The Director of DIR, under this legislation, is required to maintain a log, as a public record, of the determination requests and appeals.

*Status: Senate Inactive File*

**SB 796          Dunn          Civil penalties: private right-of-action**

SB 796 enacts the "Labor Code Private Attorneys General Act of 2004." This bill establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for subsequent violations. SB 796 also authorizes aggrieved employees to file civil actions to recover civil penalties under the Labor Code. Any civil penalties recovered in such a manner shall be distributed as follows: 50% to the General Fund, 25% to the Labor and Workforce Development Agency, and 25% to the aggrieved employee(s). This bill provides that no private action may be maintained where the Labor Agency or one of its subdivision cites the alleged violator or initiates proceedings against that alleged violator. SB 796 specifies that where the Labor Agency has discretion to assess civil penalties, a court may exercise the same discretion with respect to those penalties. Finally, this bill provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action.

*Status: Chapter # 906, Statutes of 2003.*

**SB 818          Escutia          Trial courts: interpreters**

This bill makes technical changes to the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA), which was enacted in 2002, and revises a number of the implementation dates set forth in that act.

*Status: Chapter # 257, Statutes of 2003.*

**SB 868          Dunn          Prevailing wages**

This bill revises the definition of per diem wages so that those wages shall be deemed to include the following: 1) Employer payments for worker protection and assistance programs or joint labor-management committees established pursuant to federal law, to the extent that the activities are directed to the monitoring and enforcement of laws related to public works; 2) Employer payments for industry advancement and collective bargaining agreements administrative fees, provided that these payments are required by a collective bargaining agreement pertaining to the craft, classification, or type of work within the locality or the nearest labor market area at issue; and, 3) Employer payments for purposes similar to those included in the definition of per diem wages.

*Status: Chapter # 905, Statutes of 2003.*

**SB 966          Alarcón          Public works and prevailing wages: contractors' costs**

This bill authorizes a contractor to recover increased costs related to public works contracts under specified circumstances. Under SB 966, a contractor may recover specified costs from an awarding body where that body either represented in writing that a project was not a public work or received actual written notice from the Department of Industrial Relations that the project was a public work but failed to disclose that fact. In addition, a contractor may recover increased costs from an awarding body or body undertaking a public work where the body failed to identify a project as a public work and a decision classifies it as such. Under this bill, the body may avoid liability if (1) the contractor did not directly contract with that body, (2) the body stated in writing that the work was a public work, (3) the body obliged the party with whom the written agreement was made to cause the work to be performed as a public work, and (4) the body fulfilled its statutory obligations, if any, to cause a payment bond to be obtained and maintained.

*Status: Chapter # 804, Statutes of 2003.*

**SCR 20          Burton          Immigrant Workers' Freedom Ride**

This resolution makes various declarations related to the immigrant population in California and the United States and urges the Legislature to endorse and support the Immigrant Workers' Freedom Ride. The Freedom Ride is a coalition effort of labor and civil rights advocates to promote humane immigration law reform.

*Status: Resolution Chapter # 125, Statutes of 2003.*

## **Governor's Vetoes**

### **AB 274 (Koretz)**

I am returning Assembly Bill 274 without my signature.

This bill would create a rebuttable presumption that a person's action to discharge, demote, suspend, or reduce the hours of an employee is retaliatory if it occurs within 60 days after the employee has exercised any rights enumerated under the Labor Code.

This bill could allow any employee who suspects the possibility of an adverse action to stall that action by fabricating a complaint. It would also make it difficult for a supervisor to legitimately discipline a problem employee who has exercised any right given under the Labor Code. This bill would create a burden on employers who would constantly have to defend any disciplinary action taken. Lastly, AB 274 has the potential to pre-empt a collective bargaining agreement's grievance procedures, and could interfere with the ability for the parties to negotiate a settlement.

This bill is similar to AB 2990 which I vetoed last session. While this bill attempts to address the concerns of AB 2990, it still conflicts with the presumption of innocence until proven guilty.

Sincerely,

Gray Davis

### **AB 446 (Mathews)**

I am returning Assembly Bill 446 without my signature.

As I have emphasized in the past, 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.

Last year I vetoed SB 360, which is nearly identical to this bill. Similarly, this bill is not needed because the Federal Fair Labor Standards Act already provides for the payment of wages, including overtime, prior to the close of the next subsequent pay period. The State is also subject to Labor Code Section 207, which requires regular pay days.

Additionally, according to the Department of Finance, the provisions of this bill would result in increased workload and undetermined costs to the State Controller, resulting from the necessary revamping of the payroll system. At a time when the State is operating with limited staff resources and striving to further reduce State expenditures, this bill is unnecessary.

Sincerely,

Gray Davis

**AB 643 (Mullin)**

I am returning Assembly Bill 643 without my signature.

This bill would allow the legislature to make appointments to the Occupational Safety and Health Standards Board in the event that a vacancy exists for more than 60 days.

I am vetoing this bill because it would interfere with the separation of powers between the executive and legislative branches of the government.

Sincerely,

Gray Davis

**AB 1093 (Lieber)**

I am returning Assembly Bill 1093 without my signature.

This bill would enact the California Living Wage Act, which will require the State of California, and any employer that contracts with the state, to pay a living wage to its employees.

Although I support the concept of higher wages for workers, this bill would:

- Result in increased General Fund costs that are not included in the Budget Act of 2003;
- Increase contracting costs for all state departments at a time when they can least afford it;
- Reduce competition for state contracts, thereby driving up costs and limiting the types of solutions available to state agencies;
- Raise policy concerns about the appropriateness of paying a living wage to high school and college students, who work part time for the state and who are presumably not independent wage earners;
- In addition, it is not clear which state entity, the Department of Finance or the Department of Industrial Relations, would be responsible for adjusting the wage annually, nor under what circumstances the CCPI would be discarded in favor of an "adequate living wage standard" as determined by DIR.

In light of the State's current economic condition, I am hesitant to sign this measure at this time and would hope the next Administrations reconsider this proposal in better economic times.

Sincerely,

Gray Davis

**AB 1133 (Koretz)**

I am returning Assembly Bill 1133 without my signature.

This bill provides that if a judgment for unpaid wages or penalties remains unsatisfied for 6 months after the judgment becomes final, a penalty equal to the amount of the judgment is applied. This penalty is then applied every 6 months the judgment remains unsatisfied, up to a maximum of 4 times.

This bill is intended to encourage employers to promptly satisfy judgments entered against them by the Labor Commissioners Office. However, existing law already provides that interest on judgments accrues at a rate of 10 percent per annum on the principal amount of a judgment, which remains unsatisfied.

I applaud the author for his efforts to ensure prompt payment of unpaid wages and any associated penalties. While the current 10 percent per annum rate on a judgment may not be a sufficient penalty, potentially doubling a judgment 240 percent in a two-year period is excessive. I encourage the Legislature to find a more appropriate penalty scheme.

For these reasons, I am unable to sign this bill.

Sincerely,

Gray Davis