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A Subdued Year for California Lawmakers: The New California Employment Legislation Effective January 1, 2006

Michele Benedetto Neitz
Golden Gate University School of Law, mneitz@ggu.edu

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By Michele M. Benedetto

November 2005 was an exciting time in California politics, but the year as a whole was less eventful in the Legislature. Unlike several years ago when one party controlled both the Legislature and the Governor's office, relatively few bills affecting private employers were enacted this year into law by the Democratic Legislature and Republican Governor.

This legislative update will address the most significant employment legislation signed and vetoed this year. It will also highlight a significant deadline for employers from last year's enacted legislation. Finally, this update will describe two relevant propositions rejected by the people of the State of California.

NOVEMBER 8 SPECIAL ELECTION: VOTERS REJECT GOVERNOR SCHWARZENEGGER'S PROPOSITIONS

Governor Schwarzenegger brought his legislative agenda directly to the people via a Special Election held on November 8. In a defeat for the Governor, voters rejected each of the Governor's four bids to reform state government. Two of the propositions involved employment issues: one affected public schoolteachers and the other public employee unions, and both are of particular interest to California employers.

Public Schoolteachers: Waiting Period for Permanent Status (Proposition 74)

Proposition 74 would have increased the length of time required before a teacher may become a permanent employee, from two complete consecutive school years to five complete consecutive school years. The measure, which would have applied to teachers whose probationary period began during or after the 2003-2004 fiscal year, also would have modified the school board process for dismissal of a permanent teaching employee.

Supporters of the proposition asserted that its provisions would reform education by eliminating "problem teachers." Opponents, on the other hand, argued that the measure deprived teachers of their right to due process, because it took away their right to a hearing before termination of employment. After intense campaigning on

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both sides, California voters defeated the proposition, 55.08% to 44.92%.

Public Employee Union Dues: Restrictions on Political Contributions (Proposition 75)

Proposition 75 would have permitted the use by public employee labor organizations of public employee dues or fees for political contributions only with the prior consent of individual public employees each year on a specified written form. The measure would not have applied to dues or fees collected for charitable organizations, health care insurance, or other purposes directly benefiting the public employee. The proposition would also have required public employee labor organizations to maintain and submit records to the Fair Political Practices Commission concerning individual public employees' and organizations' political contributions. The records would not have been subject to public disclosure.

Supporters of the proposition claimed it would have protected public employees from having political contributions taken and used without their permission. In contrast, opponents maintained that the measure was designed to weaken public employees and strengthen the political influence of large corporations. The majority of California voters ultimately rejected the proposition, 53.45% to 46.55%.

FOLLOW-UP: NOTABLE ISSUES FROM 2004 LEGISLATION

REMINDER: The Deadline for Compliance with Sexual Harassment Training Law Is December 31!

AB 1825 implemented strict sexual harassment training requirements for California employers. Employers with 50 or more employees must provide sexual harassment training for all personnel working in supervisory positions as of July 1, 2005. The trainings must be two hours, interactive, and repeated every two years.

The deadline for conducting these trainings is **December 31, 2005.** Employers are reminded that failure to comply with this deadline could increase their risks of liability.

Proposition 64

Proposition 64, limiting private enforcement of unfair business competition laws, passed overwhelmingly in California's November 2004 election. Proposition 64 eliminated the "unaffected plaintiff" standing and "private Attorney General" provisions of California's unfair competition law, Bus. & Prof. Code § 17200 ("UCL").

A plaintiff bringing an action under the UCL now must have suffered "injury in fact" and have "lost money or property as a result of such unfair competition." In addition, plaintiffs may no longer bring unfair competition actions on behalf of others, except within the confines of a certified class action.

Trial and appellate courts are split regarding the applicability of Proposition 64 to cases pending at the time of the election, but most have held the provisions to be retroactive. The California Supreme Court granted review on this issue in a case handled by this firm, *Californians for Disability Rights v. Mervyn's,* No. S131798. A decision is expected in 2006.

2005 LEGISLATIVE ACTIVITY

California lawmakers passed only 961 bills during this session, a significantly smaller number of bills than last year and the lowest number of bills passed since 1967. The decreased number of bills passed suggests the Legislature's recognition that Governor Schwarzenegger is willing and able to use his veto power aggressively and reflects its preoccupation with the Special Election. The Governor's veto rate remained steady, as he vetoed 25% of the bills passed in 2004, and 24% of bills passed in 2005. As a result, according to the Sacramento Bee, the 761 bills signed by Governor Schwarzenegger this year represent the

lowest annual number of bills signed by any of the last six California governors.

Use of Social Security Numbers (SB 101)

Existing law requires employers, by January 1, 2008, to furnish employee documents, *e.g.*, employee checks, drafts, or vouchers, showing no more than the last four digits of an employee's social security number or identification number. SB 101 clarified existing law in two ways. First, the bill eliminated the word "existing" as it applied to employee identification numbers, thereby enabling employers to provide new employee identification numbers to comply with the legislation. Second, the bill specified that public employers may use the last four digits of an employee's social security number, or an employee's identification number, on the itemized statements accompanying checks, drafts, or vouchers.

Direct Deposit of Final Wages; Payment of Exempt Computer Software Employees (AB 1093)

AB 1093 enacted two distinct provisions:

(1) The bill permits employers to pay an employee's final wages by direct deposit, as long as the employee has authorized this method of wage payment and the employer complies with other Labor Code provisions regulating the payment of final wages (e.g., Labor Code § 201).

(2) The bill also amends existing law to provide that an hourly-paid computer software employee may qualify for the overtime exemption if he or she is paid at least $44.63 an hour *or the full-time salary equivalent*, provided that all other requirements for the exemption are met, and that for each workweek the employee receives not less than $44.63 per hour worked. Federal law already permitted qualification by salary equivalent. As of January 1, 2005, the hourly wage required to qualify for the California exemption will be $45.84 per hour. Federal law requires an hourly wage of at least $27.63. More information, including the history of rate of pay for the computer software employee exemption, is available on the Division of Labor Standards Enforcement's website: http://www.dir.ca.gov/hourlywageforexemptcomputerprofessionals.htm.

Extension of DFEH Complaint Filing Period for Minor Employees (AB 1669)

AB 1669 extended the time period for filing a complaint with the California Department of Fair Employment and Housing ("DFEH") for an unlawful practice, for a period of time not to exceed one year from the date an person allegedly aggrieved by an employment practice attains the age of majority.

Service of Labor Commissioner Pleadings (AB 1311)

AB 1311 expanded the type of permissible service of a Labor Commissioner's complaint, notice, or decision relating to a labor hearing, allowing such documents to be served by leaving a copy at the home or office of the person being served, and subsequently mailing a copy to the person at the place where a copy was left. This bill was passed to prevent individuals from avoiding personal service of Labor Commissioner pleadings.

Meal Periods in Motion Picture and Broadcasting Industries (AB 1734)

AB 1734 created an exception from the Labor Code meal period requirements for certain employees in the motion picture and broadcasting industries who are covered by a valid collective bargaining agreement. The passage of this bill indicated the Legislature's recognition of the unique conditions of employment in the motion picture and broadcasting industries.

VETOED

Increase in Minimum Wage (AB 48)

AB 48 would have increased the minimum wage to $7.25 in 2006

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Editor: Lloyd W. Aubry, Jr., (415) 268-6558

San Francisco

Lloyd W. Aubry, Jr.	(415) 268-6558 laubry@mofo.com
James E. Boddy, Jr.	(415) 268-7081 jboddy@mofo.com
Judith Droz Keyes	(415) 268-6638 jkeyes@mofo.com
James C. Paras	(415) 268-7087 jparas@mofo.com
Linda E. Shostak	(415) 268-7202 lshostak@mofo.com

Palo Alto

David J. Murphy	(650) 813-5945 dmurphy@mofo.com
Eric A. Tate	(650) 813-5791 etate@mofo.com
Raymond L. Wheeler	(650) 813-5656 rwheeler@mofo.com
Tom E. Wilson	(650) 813-5604 twilson@mofo.com

Los Angeles

Sarvenaz Bahar	(213) 892-5744 sbahar@mofo.com
Timothy F. Ryan	(213) 892-5388 tryan@mofo.com
Janie F. Schulman	(213) 892-5393 jschulman@mofo.com
B. Scott Silverman	(213) 892-5401 bsilverman@mofo.com

New York

Miriam H. Wugmeister	(212) 506-7213 mwugmeister@mofo.com

Washington, D.C./Northern Virginia

Daniel P. Westman	(703) 760-7795 dwestman@mofo.com

Orange County

Robert A. Naeve	(949) 251-7541 rnaeve@mofo.com
Steven M. Zadravecz	(949) 251-7532 szadravecz@mofo.com

San Diego

Rick Bergstrom	(858) 720-5143 rbergstrom@mofo.com
Craig A. Schloss	(858) 720-5134 cschloss@mofo.com

Century City

Ivy Kagan Bierman	(310) 203-4002 ibierman@mofo.com

Denver

Steven M. Kaufmann	(303) 592-2236 skaufmann@mofo.com
Tarek F.M. Saad	(303) 592-2269 tsaad@mofo.com

London

Ann Bevitt	44-20-7896-5841 abevitt@mofo.com
Simeon Spencer	44-20-7896-5843 sspencer@mofo.com
David C. Warner	44-20-7896-5844 dwarner@mofo.com

If you have a change of address, please write to Chris Lenwell, Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, or e-mail him at clenwell@mofo.com.

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and to $7.75 in 2007, with indexed increases every year thereafter. Governor Schwarzenegger indicated in his veto message that he did not approve of the automatic increases, suggesting that he might support a bill increasing the minimum wage without automatic adjustments.

Gender Pay Equity (AB 169)

AB 169 would have increased the damages an aggrieved employee may obtain if successful in bringing a civil action against employers for gender pay equity violations. The bill would have mandated damage awards and new civil penalties for such violations. Governor Schwarzenegger vetoed the bill.

Disclosures for Severance Offers (AB 1310)

AB 1310 would have prohibited an employer from offering cash or any other thing of value to secure the voluntary resignation from employment of a group of 25 or more employees, unless the employer provided, at the time of the offer, detailed notice to the employees. The notice would have had to include specific disclosures on the financial consequences of accepting the offer and a 21-day period in which the employees could reconsider the offer. This bill would also have provided for a $100-per-day penalty payable to each aggrieved employee for the period between the offer and the date that the employer provided the required disclosures. Opponents believed the amount of disclosure required by the bill was burdensome, and the high potential for inadvertent errors would have created excessive litigation.

Remedies for Employment Law Violations (AB 879)

AB 879 would have restricted an employer's right to appeal the Labor Commissioner's decisions *de novo*, when the employer fails to file an answer to the administrative complaint and fails to attend the administrative hearing. In such instances, the bill would have allowed the superior court to review the administrative decision only for an abuse of discretion. Opponents argued that the bill would have taken away the rights of an employer to seek relief in a court from an adverse decision by the Labor Commissioner. Copies of these bills may be obtained from any of the lawyers listed in the side bar and/or from the editor. ■

Michele M. Benedetto is an associate in our San Diego office and can be reached by telephone at (858) 720-5171 or by e-mail at mbenedetto@mofo.com.