



California Employers Face a Potential Hurricane of Labor Code Litigation

(October 14, 2003)

The deadline is now passed for Governor Davis to act on the hundreds of bills that were awaiting action following the historic recall election. Unfortunately, many of the pro-employee bills presented to Governor Davis this fall have become law. One of the most troubling new laws Governor Davis signed over the weekend is SB 796. Dubbed by the California Chamber of Commerce as a "job killer," this law (referred to as the Private Attorneys General Act of 2004) goes into effect January 1, 2004. It provides for private employee suits to collect penalties for any violation of the Labor Code. It also permits employees to recover attorneys' fees and costs associated with such suits. Even worse, this law provides for additional civil penalties for violations of **any** Labor Code section that does not already impose a penalty. In essence, this law has opened the door for bounty-hunting private attorneys to sue employers for Labor Code violations, collect a portion of allowable penalties, and recover their fees in the process. Click [here](#) for the complete text of SB 796.

In addition to SB 796, the following Labor Code amendments may well weigh heavily on California employers next year:

AB 276

AB 276 was signed by Governor Davis on September 6, 2003, and goes into effect on January 1, 2004. This law doubles the penalties for wage and hour violations, such as failing to timely pay wages, unlawfully withholding wages, and paying less than the minimum wage. This amendment, in combination with AB 796, intensifies the potential penalties and costs associated with Labor Code claims. Click [here](#) for the complete text of AB 276.

AB 223

AB 223 was signed by Governor Davis on July 22, 2003, and it goes into effect on January 1, 2004. This law allows an employee to recover attorneys' fees on a Labor Commissioner appeal initiated by the employer if the employee recovers any amount of money, even if the employee recovers less than the original award. However, employees who appeal Labor Commissioner decisions will not face the same exposure to attorneys' fees. Thus, employees will be encouraged to appeal claims with no or little merit. Click [here](#) for the complete text of AB 223

While civil suits alleging misclassifications, unpaid overtime, off-the-clock work, and meal and rest period violations are already on the rise, these new laws are likely to spark a spate of individual and class actions against employers. Thus, it is more crucial than ever for California employers to review and update their operating procedures and ensure compliance with all laws regarding wages, hours, and time keeping practices.

On a more positive note, Governor Davis vetoed both AB 1715 and AB 274 this past weekend. As reported in our last [E-Update](#), AB 1715 would have invalidated employment-related arbitration agreements covering claims under the Fair Employment and Housing Act. AB 274 would have provided a rebuttable presumption of retaliation whenever an employer demoted, suspended, discharged or otherwise took any adverse action against any employee within 60 days after the employee “exercised rights” under the Labor Code.

We will be presenting a comprehensive review of SB 796, and all of the other important new laws, including a discussion of their practical applications for employers, during our fall seminar “Workplace Law 2004” on November 6, 2003. Click [here](#) for more information and to register for the seminar.

This E-Update was authored by [Connie Lundgren](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney at (619) 237-5200.

SAVE THE DATE! SAVE THE DATE! SAVE THE DATE!

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON ANNOUNCES

THAT ITS ANNUAL FALL SEMINAR WILL BE ON NOVEMBER 6TH

This will be an interactive workshop that will focus on how recent developments will impact your company’s day-to-day employment practices and what you need to do in 2004 to stay current with the changing employment laws.

We will examine the impact of new laws and court decisions and how these impact the workplace. We will review the changes you should make to practices and documents and will provide concrete suggestions for improving your policies in the coming year.

As always, we will also give you the floor to ask questions of our employment law experts.

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