



Laboring Results

A Monthly Dispute Resolution E-zine
of Elizabeth A. Moreno, A Professional Corp.

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Changes and Anticipated Changes in Employment Laws

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2008 brought in an unprecedented budget delay followed by the Governor's reaction to the delay by vetoing labor and employment bills. A few escaped the Governor's heavy hand:

New Salary Basis for computer Professionals

In the recession economy, computer professionals received a new salary basis. Employers became tired of tracking computer professionals overtime pay so computer professionals have become exempt employees from overtime requirements if the computer professional satisfies the duties requirements and receives an annual salary of \$75,000 for full-time employment which is paid monthly. The salary rates are subject to change each October 1st. See Labor Code section 515.5.

False Time Card Affidavits become a NO, NO!

Labor Code section 206.5 has been expanded. If an employer knowingly requires an employee to execute false statements of hours worked as a condition of being paid, the employer can be charged with a misdemeanor. This new law is intended to address employers who require the employee to sign timecards that contain false hours before being paid. This is very common if the employer wants to avoid paying over time.

Employers Time to Revise Policies to ensure Employees not Texting while driving.

On July 1, 2008 California prohibited using a cell-phone without a hands free device while driving. This was extended to texting, emailing or instant messaging while driving. Employers who have mobile employees and provide them with a cell phone, employers should review and modify their policies to ensure employees comply with the new law.

Disability Access Reform Bill Goes into Effect

SB 1608 is a comprehensive and balanced measure that protects important civil rights and assists businesses in complying with access laws. It takes a step forward in making California more proactive in supporting broader access compliance so that businesses can open their doors without fearing expensive lawsuits, and people with disabilities can have greater confidence that their mobility will not be challenged by unnecessary barriers. This law will enable employers to obtain certification of inspection of a state Certified Access Specialist, and use certification in subsequent litigation to stay proceedings pending an early evaluation conference. The law also includes new potential limitations on damages, including evaluating attorneys' fee awards requests in light of prior settlement discussions and limiting statutory damages only to plaintiffs who actually personally encountered the violation or were actually deterred access. This change comes as a result of plaintiffs who filed lawsuits claiming damages, but had never visited the business. Amended were Business and Professions Code section 5600, Civil Code section 55.3, Government Code Section 8299 and Health and Safety Code section 18945 and 18949.29.

On the Horizon in the California Legislature

Assembly Bill 141, the Workplace Flexibility Act of 2009. was introduced on January 22, 2009. This bill would permit an individual exempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without any obligation to pay overtime compensation.

Questions anticipating to be answered in 2009?

Can attorney fees be denied under FEHA if plaintiff refuses to settle? The California Supreme Court to decide this issue in *Chavez v. City of Los Angeles (2008)*. On a modest recovery by the prevailing party under FEHA can the court exercise its discretion to deny fees under CCP section 1033.5(a)(10)(B)?

In an action for employment discrimination and harassment based on hostile work environment, can the claim for harassment be established entirely by reference to a supervisor's acts that have no connection with matters of business and personnel management or may such acts be considered as part of the totality of the circumstances creating a hostile work environment. The Supreme Court will decide this in *Roby v. McKesson (2007)*.

What is the interpretation of California's statutes and regulations governing an employer's duty to provide meal and rest breaks to hourly workers? Is it enough that

the employer provides an opportunity to take these breaks? Questions to be answered in *Brinker Restaurant v. Superior Court* (2008).

Do claims adjusters employed by insurance companies fall within the administrative exemption to the requirement that employees are entitled to overtime compensation. Look for answers in the Supreme Court's anticipated decision of *Harris v. Superior Court* (2007).

This year we should have a whirlwind of litigation, legislation and court decisions.

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