

Friday, November 14, 2008

New Employment Laws Passed by California Legislature

Laws signed by Governor Schwarzenegger to take effect in September and October 2008

AB 10: Overtime Compensation for Computer Software Employees

Current overtime laws in California require employers to pay their employees overtime for any work in excess of 8 hours in one workday, and for any work in excess of 40 hours in one workweek, and for the first 8 hours worked on the 7th day of work in any one workweek.[1] California law, however, provides several exemptions from these overtime requirements, such as the executive or professional exemptions for employees who meet specific requirements.

One such professional exemption is for employees in the computer software field. Existing law provides that such an employee is exempt from the overtime provisions if the employee is primarily engaged in work that is intellectual or creative and regularly exercises independent discretion and judgment in carrying out certain specified duties.[2] Existing law provides the exemption for such employees in the computer software field whose hourly rate of pay is not less than \$36.[3]

AB 10 keeps the same requirements listed above; however, the bill adds that a computer software field employee who is paid on a salaried, rather than hourly, basis, is also exempt if that employee earns an annual salary of at least \$75,000 for full-time employment, which is paid at least once a month and in an amount of at least \$6,250.

Initially, the change in law does not seem to be significant because the pay rate of \$36 per hour at 40 hours per week totals just under \$75,000. However, it is important to make note of the change because the original exemption applied only to individuals paid on an hourly basis. Under new law, it is irrelevant whether the individual is paid hourly or on a salary—

assuming the employee meets the other requirements, the individual qualifies for the exemption regardless of how the employer calculates the individual's pay (assuming, of course, the salaried employee is paid at least once a month).

SB 1352: Prevailing Wage Rates and Wage & Penalty Assessments

Under existing California law, the Labor Commissioner is required to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if the Labor Commissioner determines that either the contractor or subcontractor, or both, violated the laws regulating public works contracts, including the payment of prevailing wages.[4] California Prevailing Wage Law is designed to impose minimum wage standards on construction projects funded, in whole or in part, with public funds.[5] Under the law, all workers employed on public works costing more than \$1,000 must be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which public work is performed.[6] Per diem wages include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in the applicable collective bargaining agreement.[7]

Currently, the affected contractor or subcontractor is permitted to seek review of such an assessment for violations of California Prevailing Wage Law by submitting a written request for a hearing before an administrative law judge to the Labor Commissioner within 60 days.[8] SB 1352 changes existing law, providing that only a hearing officer is required to hold these hearings after January 1, 2009, rather than an administrative law judge. While it remains to be seen, this change may be significant because it demonstrates a trend toward a more informal process for resolving disputes surrounding assessments issued for prevailing wage violations.

Additionally, SB 1352 allows a contractor, subcontractor, or surety to deposit the full amount of the assessment for the Department of Industrial Relations to hold in escrow pending review. If so deposited, there would be no liability for liquidated damages. This liquidated damages change is significant because under existing law, an affected contractor or subcontractor will

automatically be liable for liquidated damages on any unpaid wages 60 days after the assessment is issued, regardless of whether the affected contractor or subcontractor has requested a hearing for review of the assessment.[9]

Additionally, SB 1352 allows the Director of Industrial Relations, at his or her discretion, to waive payment of liquidated damages, or a portion thereof (whether deposited with the Department of Industrial Relations or not), if the contractor or subcontractor can demonstrate that there were substantial grounds for its appeal.

Thus, under the new law, a contractor or subcontractor who has been issued an assessment by the Labor Commissioner can avoid liquidated damages in 3 ways: (1) by full payment of the assessment within 60 days; (2) by depositing the full amount of the assessment for the Department of Industrial Relations within 60 days and pending review if the contractor or subcontractor requests a hearing for review of the assessment; or (3) at the Director's discretion if the contractor or subcontractor can demonstrate that he or she had substantial grounds for appealing the assessment.

SB 1173: Unemployment Insurance for the Motion Picture Industry

Existing law provides that until January 1, 2012, for purposes of the Unemployment Insurance Code, any employing unit that is a motion picture payroll services company, as defined, shall be treated as an employer of a motion picture production worker, as defined.[10] Existing law requires any employing unit operating as a motion picture payroll services company that quits business to file with the director of the Employment Development Department a final return and report of wages, as provided, and, within 30 days of quitting business, to notify the motion picture production companies and allied motion picture services of its intent to quit business.[11] SB 1173 extends to 45 days the time period within which a motion picture payroll services company that quits business must notify the motion picture production companies and allied motion picture services of its intent to quit business.

SB 1173 also allows a motion picture payroll services company that has

elected to be treated as an employer to apply to the director to extend an existing voluntary plan for the payment of disability benefits to motion picture production workers of the company's affiliated entities. SB 1173 requires the director to approve the extension of the plan upon specified conditions. SB 1173 deems the extension of a plan approved by the director to have met employee consent requirements for the adoption of a voluntary plan, if the plan met the consent requirements when initially adopted, and the plan provides for giving specified written notices and statements that are approved by the director.

SB 1247 & SB 585: Farmworker Housing Assistance & Tax Credits

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state tax credit amounts among low-income housing projects based on federal law.[12] Existing law also establishes a farmworker housing assistance program and prescribes requirements for claiming tax credits under the program, including a requirement that expenditures upon which the amount of the credit is based shall be eligible costs, as defined, and a limitation on the amount of development fees that may be included as eligible costs.[13] SB 1247 repeals the farmworker housing assistance program and, instead, requires that an amount specified within those tax credit provisions be set aside for projects housing farmworker households, as provided. SB 1247 also repeals specified existing tax credits for farmworker housing authorized under the Personal Income Tax Law and the Corporation Tax Law.

SB 585, in the case of a partnership, requires the allocation of the credits, on or after January 1, 2009, and before January 1, 2016, to partners based upon the partnership agreement, regardless of how the federal low-income housing tax credit, as provided, is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified. SB 585 also makes findings and declarations with regard to the public interest served by this credit as proposed to be amended by this bill.

SB 585 also incorporates specified changes proposed by SB 1247. SB 585

took effect immediately as a tax levy.

For more information about the topic above, contact Treaver Hodson (thodson@pkwhlaw.com) or Amanda Gimbel (agimbel@pkwhlaw.com) or call (877) 783.6699.

[1]Cal. Labor Code § 510.

[2]Cal. Labor Code § 515.5.

[3]Id.

[4]Cal. Labor Code § 1741.

[5]Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc. (3d. Dist. 2002) 102 Cal.App.4th 765.

[6]Cal. Labor Code § 1771.

[7]Road Sprinkler Fitters, supra, 102 Cal.App.4th 765.

[8]Cal. Labor Code § 1742.

[9]Cal. Labor Code § 1742.1.

[10]Cal. Un. Ins. Code § 679.

[11]Id.

[12]Cal. Rev. & T. Code §§ 12206, 23610.5.

[13]Cal. Rev. & T. Code § 23608.2.

Labels: [AB 10](#), [New Employment Law](#), [SB 1173](#), [SB 1247](#), [SB 1352](#), [SB 585](#)