

## **New California Labor and Employment Laws Effective January 2011**

### ***Labor Law –***

- **AB 569 – *Meal periods: Exemptions.***
  - California law previously prohibited (subject to certain exceptions) an employer from requiring an employee to work more than five (5) hours per day without providing a meal period and, notwithstanding that provision, authorized the Industrial Welfare Commission to adopt a working condition order permitting a meal period to commence after six (6) hours of work if the order is consistent with the health and welfare of affected employees.
  - AB 569 exempts from these provisions employees in a construction occupation, commercial drivers, employees in the security services industry employed as security officers, and employees of electrical and gas corporations or local publicly owned electric utilities, as defined, if those employees are covered by a valid collective bargaining agreement containing specified terms, including meal period provisions.
  - AB 569 specifies that its provisions do not affect the requirements for meal periods for certain other employees or employers. (*See Labor Code § 512.*)
  
- **AB 2772 – *Labor Commissioner: Appeals.***
  - California law previously authorized the Labor Commissioner to investigate employee complaints and hold administrative hearings to decide disputes over unpaid wages and other issues between employers and employees.
    - Prior law also permitted a party who loses at an administrative hearing conducted by the Labor Commissioner to file an appeal in the superior court.
  - AB 2772 expressly states that an employer filing an appeal must now post a bond with the court in the amount of the judgment rendered in the administrative hearing. (*See Labor Code § 98.2.*)
  
- **AB 2774 – *Occupational Safety and Health.***
  - California law previously required an employer to provide employees with a safe workplace and authorized the Division of Occupational Safety and Health within the Department of Industrial Relations to enforce health and safety standards in places of employment and to investigate and to issue a citation and impose civil penalties when an employer commits a serious violation that causes an employee to suffer or potentially suffer, among other things, "serious injury or illness" or "serious physical harm."
  - AB 2774 establishes a rebuttable presumption as to when an employer commits a serious violation of these provisions and would define serious physical harm, as specified.
  - AB 2774 establishes new procedures and standards for an investigation and the determination by the division of a serious violation by an employer which causes harm or exposes an employee to the risk of harm. (*See Labor Code § 6432.*)

- **SB 1304 – *Employment: leave and benefits.***
  - o California law previously required that employees of the state who have exhausted all available sick leave be permitted to take a leave of absence with pay, not exceeding 30 days for the purpose of organ donation and not exceeding five (5) days for bone marrow donation, as prescribed.
  - o SB 1304 requires private employers to permit employees to take similar paid leaves of absence for organ and bone marrow donation.
  - o SB 1304 requires a private employer to restore an employee returning from leave for organ or bone marrow donation to the same position held by the employee when the leave began or an equivalent position.
  - o SB 1304 prohibits a private employer from interfering with an employee taking organ or bone marrow donation leave and from retaliating against an employee for taking that leave or opposing an unlawful employment practice related to organ or bone marrow donation leave.
    - SB 1304 also creates a private right of action for an aggrieved employee to seek enforcement of these provisions. (*See Labor Code, Part 5.5 (commencing with Section 1508) of Division 2.*)

***Other Labor Law –***

- **AB 1696 – *Death benefits: payment duration.***
  - o Extends workers compensation death benefits for the children of a parent killed on duty while serving in law enforcement and fire fighting. (*See Labor Code § 4703.5.*)
- **AB 2253 – *Workers’ compensation: cancer presumption.***
  - o Cancer developed during a firefighter or certain peace officers’ time of duty is a compensable injury, if they were exposed to a known carcinogen on the job. This law extends compensable period to three (3) calendar months, but not to exceed 120 months. (*See Labor Code § 3212.1.*)
- **AB 2780 - *Workers’ compensation: individually identifiable information.***
  - o Authorizes the state Department of Health Care Services to use individually identifiable information from the Department of Industrial Relations for the purpose of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that should have been incurred by employers and insurance carriers. (*See Labor Code § 138.7.*)

***Employment Law –***

- **AB 1814 – *Discrimination in employment.***
  - o Under prior California law, the Fair Employment and Housing Act (FEHA), protected and safeguarded the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

- FEHA provided that it did not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal.
  - AB 1814 provides that FEHA does not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the retiree becomes eligible for Medicare benefits.
- **AB 1856 – *Public Employees’ Retirement.***
  - Establishes a means for a member of the California Public Employees’ Retirement System making after-tax installment payments on a service credit purchase to suspend or prospectively cancel their service credit purchase.
- **AB 2188 – *Unemployment compensation: disability benefits.***
  - Removes the requirement that the Employment Development Department pay state disability insurance (SDI) benefits by checks drawn on a bank or public depository, allowing them to pay electronically, and clarifies the conditions in which a nurse practitioner may certify eligibility for SDI benefits.
- **AB 2364 – *Unemployment insurance: benefits: good cause to leave work.***
  - Clarifies the scope of the law that defines “good cause” to voluntarily leave employment and retain eligibility for unemployment insurance benefits to include leaving to protect his or herself or his or her family from violence.
- **AB 2433 – *Unemployment insurance: use of information for tax purposes.***
  - Authorizes The Board of Equalization to admit into evidence the Employment Development Department’s confidential employment tax information in hearings and proceedings to resolve issues with the Board’s administration of fee or tax law, the amount owed by a fee or taxpayer, or the amount to be refunded.
- **AB 2538 – *Unemployment insurance: eligibility for benefits – notification.***
  - Allows the Employment Development Department (EDD) to serve a notice of levy by electronic means and by first-class mail in the event of delinquent payroll taxes, and provides EDD with the authority to seek prosecution of violations of the unemployment insurance laws in the county where the alleged offense occurred.
- **AB 2742 – *Public employment: retirement: survivors’ benefits.***
  - Allows state employees to donate leave credits to a leave bank of an eligible retired state employee who died from a non-work related illness or injury within 12 months of retirement.
- **AB 2778 – *Unemployment insurance: voluntary plans.***
  - Authorizes the Director of the Employment Development Department to approve a single voluntary plan of disability insurance for multiple small employers.

- **SB 1211 – *Unemployment insurance: benefits: eligibility: overpayments: elected officials.***
  - Requires the Employment Development Department (EDD) to determine an individual has been overpaid unemployment insurance (UI) benefits if those benefits are based on employment income from serving as an elected official. Authorizes EDD to file a related civil action for recovery of UI benefit overpayments and requires EDD to adopt related regulations by July 1, 2011.
  
- **SB 1244 – *Employment: taxes and contributions: limited liability company.***
  - Conforms Unemployment Insurance Code to federal regulations on Limited Liability Companies (LLC) so LLC's may offset federal unemployment insurance tax costs.