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— Labor & Employment Law —
Defending Employer's Rights

Labor and Employment Law Update

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- Paid Sick Leave Law Requiring Three (3) Days of Sick Leave Goes Into Effect In 2015

**“Healthy Workplaces, Healthy Families Act of 2014”
(AB 1522)**

All Employers Required To Provide Paid Sick Leave

California became the second state to require employers to provide paid sick leave. This new law requires employers to provide up to three (3) days of paid sick leave per year. Unlike Connecticut's paid leave law, which applies only to employers with more than 50 employees, the new CA law applies to almost all employers regardless of size, many public employers, the state, and municipalities. The law does contain many exceptions, including one for employees who are already covered by collective bargaining agreements, provided that the CBAs already provide paid sick days.

As this law goes into effect on July 1, 2015, we will send out a Special Update in the near future to provide the pertinent details/requirements for all employers.

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DISCRIMINATION

Gender Discrimination – Settlement of \$100 Million Class Action

Bayer Corp. ended a three-year battle with current and former employees who brought a \$100 million gender discrimination suit against the company. The plaintiffs, women who work or worked for Bayer, accused Bayer of systematic discrimination against women, including: men greatly outnumbering women in management positions, promotion and pregnancy bias claims, as well as Equal Pay Act claims.

Bayer Settles Workers' \$100M Sex Discrimination Suit, Law360 (January 30, 2015) Kat Greene

Disability Discrimination – \$2.6 Million Jury Verdict

A former Rite Aid pharmacist received a jury verdict of \$2.6 Million for disability discrimination and failure to accommodate. Rite Aid fired him after he refused to attend immunization training, which was primarily given for the purpose of administering flu shots. He provided human resources and district managers with a letter from his physician stating that he had trypanophobia, commonly referred to as needle phobia, and that it would be unsafe for him and customers to give immunizations based on injections. After he was fired, he filed a complaint with the EEOC, which determined that his ability to administer vaccinations was not an essential job function and that providing an accommodation would not have imposed an undue hardship on Rite Aid.

Needle Phobic Pharmacist Wins \$2.6M Verdict Against Rite Aid, Law360 (January 23, 2015) Matthew Bultman

Disability Discrimination / Failure to Accommodate

The EEOC recently filed lawsuits against Wal-Mart and Kmart over the retailer's failure to accommodate disabled workers who couldn't provide urine samples for drug testing. Both companies have agreed to settle the allegations that they violated the American with Disabilities Act when they refused to hire prospective employees suffering from renal disease who said they were unable to take a urinalysis drug test. The EEOC said the companies should have provided the workers an alternative test, like a blood test. These lawsuits fit neatly within the EEOC's strategic plan adopted in 2012 which places an emphasis on protecting employees from discrimination related to the process of hiring and bringing new employees into a company.

EEOC Action Could Mean Uptick In Urine Test Lawsuits, Law360 (January 30, 2015) Jonathan Randles

Religious Discrimination

Abercrombie & Fitch Stores has told the U.S. Supreme Court that it did not violate the anti-discrimination law when it passed on hiring a Muslim teen who wore a headscarf to a job interview. Abercrombie claims that it is up to the employees to make a company aware of a policy that conflicts with their religious beliefs. According to Abercrombie, company supervisors could not have known that the teen wore the headscarf for religious purposes just by looking at her. If the Supreme Court agrees with the EEOC, companies will be forced to preemptively probe the suspected religious views of their employees, and this is exactly the type of stereotyping that Title VII is intended to prevent.

Abercrombie Defends Hijab Decision In Supreme Court, Law360 (January 30, 2015) Jonathan Randles

RETALIATION

Retaliation / Whistleblower

Joanne Hoepfer, a 20-year litigator for the San Francisco City Attorney's Office, has sued her former boss, City Attorney Dennis Herrera, for retaliation. Hoepfer alleges retaliation after she filed a claim alleging the existence of a scheme that she said caused the City to pay more than \$10 million in unnecessary sewer line repairs. Her complaint alleges that after she brought the results of her investigation into the scheme to Herrera's attention, she was transferred, the investigation was stopped, and she was terminated 18 months later. The City Attorney's Office claims that Hoepfer is a disgruntled employee who has some axes to grind against her former colleagues, and that her allegations are unsupported by facts.

SF City Atty Sued By Ex-Deputy Over Alleged Retaliation, Law360 (January 9, 2015) Brandon Lowrey

WAGE/HOUR

Investigator Seeks Years Of Overtime For Class Members Misclassified As Independent Contractors

A class of investigators who conduct background checks for the U.S. Government are seeking years of overtime back pay for being misclassified as independent contractors. The lead plaintiff of the class claims that his employer, KeyPoint Government Solutions, Inc., switched him from independent contractor status to full employee without any substantial change to his duties. This led him to believe that he and many other investigators had been denied their fair pay for years.

Key Point Misclassified Investigators To Deny OT, Suit Says, Law360 (January 30, 2015) Jacob Batchelor

Security Guards Must Be Compensated For All On-Call Hours Spent Under Employer's Control At Assigned Worksite – Even Sleep Time

The California Supreme Court held that, under the California Wage Order covering security guards, all on-call hours constitute compensable work hours, and further, that an employer cannot exclude "sleep time" from a security guard's 24-hour shift. Here, CPS Security had a policy that an on-call guard wanting to leave the worksite had to notify a dispatcher and indicate where he or she would be and for how long. If another employee was available for relief, the guard had to wait until the relief arrived. If another employee was not available, the guard had to remain onsite, even in the case of a personal emergency. Even if relieved, the guard had to be accessible by pager or phone, and stay close enough to return in 30 minutes. The class action lawsuits were brought because the guards were not paid for on-call hours unless (1) an alarm or other circumstance required that they conduct an investigation; or (2) they waited for, or had been denied, a reliever.

Tim Mendiola, et al. v. CPS Security Solutions, Inc., et al, (2015) ___ Cal.4th ___
<http://www.courts.ca.gov/opinions/documents/S212704.PDF>

HOWEVER ...

A Security Guard Remaining On-Call During A Rest Break Is Not Actually Working, And Is Not Compensable

The California Court of Appeal held that a security guard remaining on-call during his/her rest break does not constitute performing work and is therefore not compensable.

Although the employer required the guards to remain vigilant while on break, they were allowed to use their breaks engaging in personal activities like reading, smoking, and surfing the internet. The Court made the distinction, however, that the “relieved of all duty” language from California Wage Order No. 4 does apply to meal breaks, and that an employer may not retain any degree of control over a security guard during their meal break without compensating them accordingly for that time.

Augustus v. ABM Security (2015) ____ Cal.App.4th ____.
<http://www.courts.ca.gov/opinions/nonpub/B243788.PDF>

PUBLIC EMPLOYERS LAW

California Public Records Act – Trial Court May Order Additional Fees and Costs Be Paid Before The Court Compels Production Of Records

The California Court of Appeal held that a trial court may require additional imposition of fees and costs over and above normal duplication costs, when the compelled production requires generation, compilation and redaction of information from confidential electronic records. Here, the police department attempted to limit its response to a Public Records Act request by: (1) offering to produce only redacted and summarized information; and (2) reducing the 6-month period requested to the 60 days immediately preceding the date of the request. The Court of Appeal held that the substantive and temporal limitations were not authorized by the CPRA, and that the trial court must first perform the required balancing of interests test, that is, whether “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

Fredericks v. Superior Court (City of San Diego) (2015) ____ Cal.App.4th ____.
<http://caselaw.findlaw.com/ca-court-of-appeal/1689858.html>

IN THE TRENCHES

\$73 Million Settlement Of Wage And Hour Class Action Against Bank Of America

Bank of America settled a wage and hour class action with a national class of employees for \$73 million. The class alleged that the bank maintained a uniform company-wide policy and practice of requiring non-exempt retail banking center employees at certain call centers to perform off-the-clock work in violation of the Fair Labor Standards Act (FLSA), California state law, and Washington state law.

In Re: Bank of America Wage and Hour Employment Practices Litigation, *LA Daily Journal, Verdicts and Settlements* (January 9, 2015)

\$7.6 Million Awarded To Two Employees For Wrongful Termination

An arbitration panel awarded two former Goldman Sachs employees \$7,641,900 in damages for wrongful termination. In addition to wrongful termination, the employees also alleged causes of action for wrongful withholding of compensation, breach of contract, breach of the duty of good faith and fair dealing, fraud and misrepresentation, quantum meruit and unjust enrichment, breach of fiduciary duty, conversion and violations of federal and California labor and wage laws.

Christopher Barra, et al. v. Goldman Sachs & Co., *LA Daily Journal, Verdicts and Settlements* (January 23, 2015) *Financial Industry Regulatory Authority, Case Number: 10-02659.*

\$5.8 Million Settlement Of Wage And Hour Class Action Against Bank of America

A class of appraisers employed by Bank of America settled their class action for \$5.8 million. The appraisers alleged wage and hour violations including, overtime violations, itemized wage statement violations, meal and rest period violations, waiting time penalties and civil penalties against the bank for wrongfully classifying certain appraisers as exempt. The settlement applies only to “review appraisers” and includes the reclassification of the review appraiser position to non-exempt.

Terry Boyd, et al. v. Bank of America, et al., LA Daily Journal, Verdicts and Settlements (January 16, 2015) U.S. District Court, Central District, Case Number 8:13-cv-00561-DOC-JPR.

\$3 Million Class Action Settlement For Wage And Hour Violations

A class of employees, including housekeeping, janitorial, laundry and dining departments settled their action against their employer Palmcrest Care Center for \$3,000,000. The class alleged wage and hour violations, including meal and rest period violations, failure to pay minimum wage, failure to pay all wages at the time of termination, and failure to provide accurate wage statements. The class also alleged that their employer’s policy and practice of rounding time card entries to the nearest quarter hour, rather than documenting actual time worked, failed to compensate class members for all time worked.

Luis Irizarry v. Palmcrest Care Center LLC, et al., LA Daily Journal, Verdicts and Settlements (December 19, 2014) Los Angeles Superior Court, Case Number BC489570.

\$2.4 Million Settlement Of Wage And Hour Class Action Against JPMorgan Chase

A class of 158 real estate appraisers employed by JPMorgan Chase settled their class action for \$2.4 million. The appraisers alleged that the bank misclassified them as exempt employees and misrepresented that they were, therefore, not entitled to overtime wages. The class also made a claim for waiting time penalties. The settlement agreed to pay \$2.4 million to a common fund and also to reclassify the “Appraiser I” position as non-exempt, so that employees would be paid for overtime and for missed meal or rest periods.

Kenneth Lee, et al. v. JPMorgan Chase & Co., et al., LA Daily Journal, Verdicts and Settlements (December 12, 2014) U.S. District Court, Central District, Case Number 8:13-cv-00511-JLS-JPR.

\$1.6 Million Jury Verdict For Disability Discrimination/Wrongful Termination

A psychiatrist for the California Department Of Corrections and Rehabilitation (CDCR) alleged that her workload increased so dramatically, that she had to take several leaves of absence. Near the end of her final leave of absence, she requested accommodations for her major depressive disorder and her attention deficit hyperactivity disorder. She alleged that the CDCR, however, refused to accommodate her, failed to engage in the interactive process, and ultimately terminated her. The CDCR contended that it did engage in the interactive process, and this it did offer to accommodate her.

Myra Becraft v. California Department Of Corrections and Rehabilitation, LA Daily Journal, Verdicts and Settlements (January 9, 2015) Case Number 37-2012-00100860-CU-WT-CTL.

\$1.37 Million Jury Verdict For Disability Discrimination, Retaliation And Wrongful Termination

A 60-year old resident manager won a \$1.37 million dollar jury verdict against her employer, the Community Development Commission of the County of Los Angeles. She alleged that she was fired in retaliation for complaining about harassment, and after having taken a medical leave under the California Family Rights Act (CFRA). She claimed she was terminated in retaliation for filing five complaints of religious harassment and discrimination, and that after each complaint the Commission made her job more difficult. She also claimed that her sick leaves were taken away after she returned from a medical leave of absence protected by the CFRA.

Huron Mayo v. Community Development Commission of the County of Los Angeles, LA Daily Journal, Verdicts and Settlements (December 19, 2014) Los Angeles Superior Court, Case Number BC486184.

\$1.2 Million Jury Verdict For Disability Discrimination / Failure To Accommodate

David Azzolin, a former Range Safety Officer on the San Bernardino County Sheriff's Department, received a jury verdict of \$1.2 million for disability discrimination and failure to accommodate. Azzolin alleged that he had suffered a seizure as a result of the hazardous levels of lead on the shooting range, and filed a workers' compensation claim. The County initially denied the claim, but after meeting with a county physician, he was given work restrictions to not be exposed to irritant chemicals or dust. Azzolin requested reasonable accommodation for these restrictions, but the Sheriff's Department unilaterally determined it could not accommodate them without engaging in the interactive process. The Department

terminated Azzolin claiming that: (1) he had not engaged in the interactive process; (2) he had been hired as a contract employee for a specific position and that he could not be moved; and (3) because his accommodations precluded him from continuing to work as a range safety officer.

David Azzolin v. San Bernardino County Sheriff's Department, LA Daily Journal, Verdicts and Settlements (December 19, 2014) San Bernardino Superior Court, Case Number CIVDS 1206805.

As always, please do not hesitate to contact any of our attorneys if you have any questions or comments.

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Presentations

We are also available to present on various topics, including:

- The Limitations of AB 646 Post Impasse Procedures
- Labor Negotiations
- Pension Reform
- Police Officer Bill of Rights (POBR)
- Fire Fighter Bill of Rights (FOBR)

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