



## **2008 Employment Law Update\*** **Jeanine DeBacker**

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*\*All effective January 1, 2008, unless otherwise noted.*

### **Wage and Hour**

**Meal and Rest Breaks.** (*Murphy v. Kenneth Cole Productions, Inc.*, April 16, 2007) One additional hour of pay to cover denied meal or rest period is deemed premium wage subject to a three year statute of limitations period.

**Hourly Rate of Pay for Exempt Computer Professionals. (SB 929)**  
Computer software employees who otherwise meet the criteria of California Labor Code §515.5 shall be considered exempt from overtime if the hourly rate of pay is not less than \$36.00 per hour – a decrease from the almost \$50.00 per hour required under prior law.

**Pharmacists' Alternative Workweek. (SB 812)** New law clarifies alternative workweek schedules permitted for pharmacists.

**Increase in Minimum Wage. (SB 1835)** California's minimum wage increased to \$8.00 per hour on January 1, 2008. Consequently, exempt employees must be paid at least \$2,773.33 per month (\$33,280.00 per year).

**Social Security Numbers on Itemized Wage Statements. (Labor Code §226(a)(7))** Wage statements cannot include an employee's social security number; instead, the wage statements must include last four digits of the employee's social security number or an employee identification number.

### **Workplace Safety**

**Medical Marijuana.** (*Ross v. RagingWire Telecommunications, Inc.*, January 24, 2008) Employer is not required to accommodate employee's medical marijuana use and may terminate.

**New Cal-OSHA Forms.** Employers must post Cal-OSHA Form 300A (Annual Summary of Work-Related Injuries and Illnesses) even if no work-related injuries or illnesses occurred in 2007.

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**Personal Protective Equipment.** Employers must pay for Personal Protective Equipment, except for ordinary safety-toed footwear, ordinary prescription safety eyewear, logging boots, and ordinary clothing and weather related gear.

### **Leaves of Absence**

**FMLA Military Leave.** On January 28, 2008, the FMLA was amended to provide for up to 26 weeks of job protected family leave to injured members of the Armed Forces and up to 12 weeks of leave because of qualifying exigency arising out of an employee's parent, child or spouse's active duty or call to active duty.

**Leave for Military Spouses. (AB 392)** Effective October 9, 2007, California employers with 25 or more employees must permit spouses of members of the Armed Forces, National Guard or Reserves to take up to 10 days of unpaid time off while the military spouse is on leave from active duty during a period of military conflict.

**San Francisco Paid Sick Leave Ordinance.** Effective February 5, 2007, all employers must provide one hour of paid sick leave for every 30 hours worked to all employees who work in the City or County of San Francisco up to a maximum accrual. Employees may use the accrued sick leave for their own illness or medical treatment or that of a family member.

### **Miscellaneous**

**Publicity for Workers Compensation Violations. (SB 869)** Labor Commissioner to establish program to identify unlawfully uninsured employers which will be published on the Commissioner's website and will provide a prioritized list of targets for enforcement.

**Expansion of Protected Classes. (AB 14)** Civil Rights Act of 2007 amends 51 nondiscrimination provisions in various state statutes to make their protections consistent with the Unruh Civil Rights Act and the Government Code.

**Federal Earned Income Tax Credit Notice. (AB 650)** California employers must notify each employee, either by hand delivery or by U.S. Mail, that the employee may be eligible for the Federal Earned Income Tax Credit (EITC). This notice must be given one week before, one week after, or at the same time that the employer provides a W-2 statement or Form 1099 or similar wage statement.

**Hands-Free Cell Phone.** Effective July 1, 2008, drivers are prohibited from using a cell phone while operating a moving vehicle unless the telephone is used in hand-free talking and listening mode. (Drivers of commercial vehicles are exempted from this law and can use push-to-talk phones until July 1, 2011).

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**Whistleblower Protection at Health Facilities. (AB 632)** Health facilities are prohibited from discriminating or retaliating against any patient, employee, member of the facility's medical staff, or any other health care worker of the facility because that person (1) has presented a grievance, complaint, or report to an entity or agency responsible for accrediting or evaluating the facility or to any other governmental entity; or (2) has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, service, or conditions at the facility. A prevailing employee is entitled to reinstatement, reimbursement and legal costs, in addition to the previously available civil penalty.

The federal government issued a **new I-9 Form** which can be downloaded at [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf).

The federal government issued a **new EEO-1 Form** which can be downloaded at [www.eeoc.gov/eeo1survey](http://www.eeoc.gov/eeo1survey).

The IRS issued a new mileage reimbursement rate of \$.505 per mile.

*Jeanine DeBacker is a partner in Wendel Rosen's employment law practice where she counsels employers on human resource and employment law issues. She creates policies and procedures, assists in drafting of employee handbooks and provides counseling and training programs on a variety of employment issues in order to minimize the risk of exposure to employment claims. She also has experience defending employers in sexual harassment, race and age discrimination, wrongful discharge and other employment-related claims. Jeanine is the legislative director of the CVHRMA. She can be reached at (510) 834-6600 or [JDebacker@wendel.com](mailto:JDebacker@wendel.com).*