

**CEAC LEGISLATIVE UPDATE by: Bruce Matlock, Attorney at Law**  
*Updated 10/26/2011*

*\*\*View bills at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).*

1. **Signed by the Governor** - With the exception of AB 1396, which is effective 1/1/2013, all other bills are effective January 1, 2012.
  - AB22 - Credit Checks - Vetoed last year, prohibits employers from requiring credit checks on applicants unless the information is "substantially job relevant". Among other requirements, it would limit use of credit reports to non-managerial employees only if they have "...regular access to \$10,000 or more or cash...."
  - AB 1396 - Commission Agreements - Effective January 1, 2013, requires all commission agreements to be in writing and signed by the employee. The bill includes a definition of what constitutes commissions.
  - SB 24 – Privacy - Adds notice requirements for security breaches of personal information.
  - SB 299 - Health Insurance for Pregnancy Disability Leave - Requires employers to continue health insurance for the 16 weeks of PDL, even if the employee is not covered by FMLA. Coverage would be the same as if the employee were working. Only applies to employers with 5 or more employees.
  - SB 459 - Willful Misclassification of Independent Contractor - Would make such actions subject to fines up to \$25,000 per violation.
  - AB 469 - Notice to Employees - In addition to numerous changes in Labor Commissioner procedures, mandates a new employer requirement to provide written notice to all new hires of employment data. The law excludes exempt employees, public employees and most employees covered by union contracts. A copy of those requirements is included later in this report.
  - AB 272 - Bone Marrow Leaves of Absence - Last year the Governor expanded the right, previously limited to state employees, to take job protected leave for donation of bone marrow and organs to private industry employees. This bill clarifies those rights. A summary is included below.
  
2. **Vetoed by the Governor**
  - AB 325 - Bereavement Leave - Would require employers to give employees with 60 days of service, up to 4 days of unpaid bereavement leave.
  - AB 274 - Response to UIB claims -Originally increased the time for employer response from 10 to 30 days. Amended to allow later response if employer can show "good cause". Requires EDD to give employers link to list of definitions of "good cause" for late response.
  
3. **Bills held over until 2012**
  - AB 889 - Domestic Workers - Major expansion of laws covering "domestic workers", including personal attendants. Affected employers should review the bill at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).
  - SB 111 - English Only Rules - Extends the restrictions on English only rules to all businesses transactions.
  - AB 51- Payroll Cards - Originally stated that it is the Legislature's intent to look at the use of payroll cards by employers. Amended and now contains significant rules for using payroll cards, including that employees may not be forced to use.
  - AB 197 - Minimum Wage Violations - Increases the penalty to twice the amount due.
  
4. **Summary of Major Bills**
  - AB 469 Notice to Employees - Labor Code Section 2810.5.
    - (a) (1) At the time of hiring, an employer shall provide each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

- (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
- (C) The regular payday designated by the employer in accordance with the requirements of this code.
- (D) The name of the employer, including any "doing business as" names used by the employer.
- (E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.
- (F) The telephone number of the employer.
- (G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

Notice of changes to employee:

- (b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:
  - (1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.
  - (2) Notice of all changes is provided in another writing required by law within seven days of the changes.

This requirement does not apply to:

- (c) For purposes of this section, "employee" does not include any of the following:
  - (1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.
  - (2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.
  - (3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.
- SB 272 Bone Marrow and Organ Donor Leave - This bill clarifies the rules for these leaves. They include:
  - An employee may take 30 business days of leave in a 12 month period for organ donation. The leave may be taken intermittently.
  - An employee may take 5 business days of leave in a 12 month period for donating bone marrow. The leave may be taken intermittently.
  - The leave time does not count toward FMLA nor CFRA usage.
  - The Leave does not constitute a break in service for accrual of benefits including health insurance coverage.
  - The employer may require the employee to use up to 10 days of accrued sick leave, vacation or PTO.

## 5. Major Court Actions

- Meal and Rest Periods - The California Supreme Court has agreed to hear oral arguments in the case of *Brinker vs Superior Court*, a case that began before 2008. That decision should settle the issue of whether an employer must enforce the California meal and rest period rules, or need only "provide" an opportunity for employees to take those breaks. Several lower courts have ruled that employers need only provide the opportunity to take those breaks. Oral arguments are scheduled for November

8, 2011. The Court has to issue a decision within 90 days. Perhaps by early 2012 we will have a definitive answer.

- Rounding Time Card Entries - I learned from the California Chamber of Commerce that a San Diego Superior Court ruled, in a case involving See's Candy, that rounding of time card entries is illegal. The Chamber, and I am sure a number of employer organizations, have asked for a review by a California Court of Appeal.

## 6. National Labor Relations Board Actions

- The NLRB enforces Federal law regulating union/employer relations. The Board is responsible for conducting union elections and resolving disputes between employers and unions. Three issues involving the NLRB have recently been come to light:
  - 1) New Poster: The NLRB has ordered that most employers place a new poster in the workplace informing employees of their rights to join, or not join, a union. The poster is similar to one that Federal contractors have been required to post. Several employer organizations have challenged that requirement in court. Unless the courts interfere, the poster must be in place by January 31, 2012.
  - 2) Union Election Procedures: The NLRB has issued proposed regulations that would speed the union election process. In some cases elections could be held less than a month after an employer is notified of a union petition. Most disputes involving the election, including which employees would be included in the proposed bargaining unit, would be deferred until after the election. Employers would be required to give the union, before the election, home phone numbers and e-mail addresses of all employees in the proposed bargaining unit. Under current rules, employers only have to give names and home addresses to the union.
  - 3) Employee Rights and Social Media: The NLRB has ruled in several cases that employees have a protected right to discuss working conditions with co-workers using social media. Those protected comments include criticism of supervisors and criticism of pay, benefits and company policies. The NLRB has also ruled that using derogatory terms for managers and supervisors may also be protected activity. California law also prohibits employers from punishing employees for discussing pay and working conditions. Labor Code Section 232.5.