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2004 E-ALERT
New California And Federal Employment Laws For 2004

December 23, 2003

Despite losing the recall effort, Governor Davis signed over 880 of the 971 bills the legislature sent him. From an employer's perspective, Davis continued his trend of approving employee-friendly bills – drawing staunch criticism from businesses already affected by a weakened economy. Echoing in the shock wave caused by last year's paid leave bill, Davis signed bills that mandate employer-provided health insurance, expand sexual harassment liability, and create new causes of action to combat alleged Labor Code violations. With such a large number of bills affecting the workplace, this article addresses only a few of those bills with which employers will need to comply in the coming years.

SB 1661 – Paid Family Leave (2003 Law)

SB 1661 was the legislature's most controversial bill during last year's term. Under this law, eligible employees receive up to six weeks of paid leave for the sickness or injury of a family member or domestic partner or for the birth, adoption or foster-care placement of a new child. Employees cannot begin taking paid leave until July 1, 2004, and must incur one week of unpaid leave prior to instituting their leave under this law. To pay for the program, employees, depending on their income, will have up to \$70 additional per year deducted from their paychecks beginning January 1, 2004.

SB 1661 does not contain a requirement for employers to reinstate employees returning from this leave, so employers are not required to hold open positions for employees on a leave unless required to do so under some other state or federal law, such as the federal Family and Medical Leave Act ("FMLA") or the California Family Rights Act ("CFRA"). Additionally, this new law will not extend the 12 weeks of unpaid leave available to employees under FMLA or CFRA.

Beginning January 1, 2004, employers must supply a notice promulgated by the California Director of Employment Development about these new insurance benefits to each employee hired on or after January 1, 2004 and to employees leaving work on or after July 1, 2004, because of pregnancy, sickness or dependant care. The Director of

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Employment Development should provide this notice to you prior to January 1, 2004, for distribution to your employees.

SB 727 – Clarifications To California’s New Paid Family Leave

As previously stated, California created the nation’s first paid family leave policy with the passage of SB 1661, last year. SB 727 clarifies some of SB 1661’s provisions and closes some of its loopholes.

First, SB 727 requires that physicians certifying employees’ leaves to care for a family member base their certification on a physical examination and documented medical history of the family member.

Second, SB 727 allows employers to require that employees take up to two weeks of earned, but unused vacation, as a condition of the employee’s receipt of paid family leave benefits.

Third, SB 727 imposes a penalty of 25 percent of the benefits paid to an employee against a physician, if that physician falsely certifies an employee’s leave.

Finally, SB 727 broadly defines the physicians and practitioners able to certify leaves as those “duly licensed or certified by the state or foreign country where the claimant is receiving care.” Thus, if an employee is receiving care in Mexico, a Mexican physician could certify the employee as eligible for this California-provided paid leave. Also, employees adhering to religions believing solely in prayer or spiritual healing may have their church’s “duly authorized and accredited” practitioners certify their family members’ serious health conditions.

SB 796 – Private Enforcement Of Labor Code Violations

Existing law tasks California’s Department of Industrial Relations (the "Department") with enforcing Labor Code violations. SB 796 now allows aggrieved employees to act in the Department’s stead to enforce these violations. For instance, Labor Code Section 431 requires all employers to file their employment application with the Division of Labor Standards Enforcement. Existing law does not provide for the employee to bring a private cause of action for an employer’s violation of Section 431—only the Labor Commissioner could bring the action. SB 796, however, now gives the employee an opportunity to sue to enforce all sections of the Labor Code.

Employees acting under SB 796 receive attorney fees’, costs, and a “bounty” of 25% of the civil penalty, in addition to whatever funds the employee would have been

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entitled to had the employer complied with the Labor Code. The penalty's remaining 75% is distributed between the Department and the State's General Fund.

Where a Labor Code violation, like Section 431 from the example above, does not have a monetary penalty attached, SB 796 provides a "default" penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for subsequent violations per pay period.

Similar to actions under California's Unfair Competition laws (Business and Professions Code Section 17200), SB 796 also allows a class-action-type suit where aggrieved employees can bring the suit on behalf of other current or former employees. Suits of this nature, depending on the number of violations and the size of the employer's business, could lead to extremely large civil penalties.

Aggrieved employees need not report these violations to their employers or to the Department prior to instituting suit. Because of this, employers likely will have little to no warning before an employee attempts to "shake them down" for an alleged Labor Code violation.

High-dollar penalty violations will be the likely target of suits under SB 796. For example, employers should prepare for suits based on alleged Cal-OSHA violations because penalties can be in the tens of thousands of dollars for serious violations. Smaller dollar violations (such as for record-keeping violations) also may be aggregate targets for employees seeking class-action type suits.

SB 2 – Mandated Employer Provided Health Care

One of the most controversial bills of this legislature, SB 2 creates a system that requires designated employers to either provide health coverage for their employees or pay a fee to a state-run insurance service that, in turn, will provide coverage.

Generally, employers can satisfy this bill's requirements by providing proof of:

- An employer-provided, group health-insurance policy that covers hospital, surgical, and medical expenses;
- Coverage for eligible employees in a Medicare insurance program;
- A Union's health and welfare fund;
- Any other collective bargaining agreement that provides for health and welfare coverage; or

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- Any employer-sponsored, group-health plan covered by the Employee Retirement Income Security Act of 1974 (“ERISA”).

SB 2 is unclear as to what minimum levels of coverage (if any) need to be provided under the above plans. Consequently, it is unclear if the employer can sponsor a low-cost catastrophic injury plan that qualifies as an ERISA plan and satisfies SB 2’s requirements.

For those employers who cannot provide such proof, as of January 1, 2006, large employers with 200 or more employees must contribute to the state’s newly created health-care program in an amount sufficient to cover eligible employees *and* their dependents. And, as of January 1, 2007, employers with 20 to 199 employees must contribute to the state’s program in an amount sufficient to cover the eligible employee only. Employers with 20 to 49 employees must comply with this mandate only if a health-insurance tax credit passes that provides a credit of at least 20% of the employee’s health-insurance costs. At the present time, that credit has not yet passed.

An eligible employee under this law is an employee who works at least 100 hours per month for the employer and has worked for the employer for at least three months.

With minimal exceptions, employers can require employees to contribute up to 20% of the employees’ (and, if applicable, the employees’ dependents’) premium. Consequently, employers typically must pay no less than 80% of employees’ (and, if applicable, dependents’) health-insurance premiums.

Employers who decline to provide coverage must contribute a yet-to-be-determined, per-employee fee to cover the cost of coverage. Employers unable to provide proof of coverage also are tasked with collecting the employee’s share of the health insurance premium. Failure to collect the premium and timely transmit the employee’s amount to the state can result in a penalty equal to double the employee’s contribution.

Employers also may be penalized through attempting to circumvent SB 2. If employers improperly designate employees as independent contractors or temporary employees, or if the employer reduces an employee’s hours below the 100 per month threshold, to avoid any obligations under this law, the employer can be liable to the state for double any fee that the employer would otherwise have paid.

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AB 223 – Employees Receiving Even One Cent From A Labor Board Appeal Will Receive Costs and Attorneys’ Fees

This law was passed to respond to the California Supreme Court’s 2002 ruling in Smith v. Rae-Venter Law Group. If a party appealed a Labor Commission decision and was unsuccessful on appeal, that party would owe costs and attorney’s fees. Prior to Smith, Courts interpreted this to mean that an employee could only be unsuccessful on appeal if he or she was awarded nothing. Smith, however, changed this interpretation and interpreted “unsuccessful” to mean that an employee needed to receive a more favorable award than that bestowed by the Labor Commission. AB 223 restores the previous case law’s interpretation and designates that if the employee is awarded more than \$0.00, the employee is successful on appeal, and, therefore, is entitled to attorney’s fees.

AB 196 – Sex Discrimination Now Includes Discrimination Against Individuals Due To The Perception Of Their “Gender”

While we all know that we cannot discriminate against employees on the basis of their “sex,” this law expands the state’s definition of “sex” to include “gender.” Under this law, “gender” is defined as:

- The employee’s or applicant’s actual sex;
- The employer’s *perception* of the employee’s or applicant’s sex; or
- The employer’s perception of the employee’s or applicant’s identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the employee’s or applicant’s sex at birth.

The new law is unclear about how employers should handle many possible situations, such as cross-dressing, trans-gender issues, sex change issues, and appropriate restroom selection. Nevertheless, even with AB 196, employers still can require employees to adhere to reasonable workplace grooming and appearance standards.

AB 634 – Precludes Confidential Settlements Regarding Elder Abuse

AB 634 makes confidential settlement agreements in elder abuse cases “disfavored.” Primarily affecting long-term-care or elder-care facilities, AB 634 precludes judicial enforcement of typical settlement agreements that these facilities might enter into, unless:

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- a. The information is privileged under existing law; or
- b. The information is not evidence of elder abuse (as defined under California law).

Parties attempting to keep the settlement agreement confidential must demonstrate a substantial probability that prejudice will result from the settlement's disclosure and that the party's interest in the information "cannot adequately be protected through redaction." However, AB 634 still allows parties to keep confidential the amount of money paid in the settlement agreement.

SB 777 – Increased Whistleblower Protections

In the wake of the Enron and WorldCom scandals, additional protections for whistleblowers under California law were expected. Under existing law, California only provided whistleblower protections that prohibited employers from:

- Making, adopting or enforcing policies that prevented employees from disclosing state or federal violations statutory and regulatory violations to governmental or law enforcement agencies; or
- Retaliating against an employee from making such a disclosure.

SB 777 increases these existing protections to include:

- Employees who refuse to participate in an activity that would be a violation of state or federal rules, regulations, or statutes; and
- Employees who exercised their right to report conduct under this law with a former employer (anti-"blackball" provision).

Corporate or limited liability employers now also face the possibility of higher fines for violations. Prior to SB 777, \$5,000 was the maximum penalty for violations of the whistleblower statute. SB 777 increased the maximum penalty to \$10,000 for corporations.

Currently, employers defending a whistleblower claim need to overcome, by a "preponderance of evidence" standard, that the employer did not commit an adverse action against a whistleblower in retaliation for the employee's whistleblower activity. SB 777 requires the employer to make this showing by "clear and convincing evidence" – a much higher standard.

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SB 777 also creates a California Attorney General-maintained whistleblower “hotline.” Employees may call this number to report violations of federal or state law and violations of fiduciary duties to shareholders, investors or employees. The Attorney General must then refer these matters to the appropriate government authority for possible investigation.

Finally, as of January 1, 2004, employers must post a notice showing employees' rights and responsibilities under the whistleblower laws. This notice must include the telephone number for the California Attorney General's whistleblower hotline. A sample notice complying with this law's requirements for non-governmental, private employers is attached to this Legal Update.

Employers who do not already have a whistleblower protection policy should implement such a policy and educate their supervisors about lawfully dealing with whistleblowing employees.

SB 523 – \$1 Million Civil Penalties For Corporate And LLC Malfeasance

Last year the federal Sarbanes-Oxley Act granted increased whistleblower protections and produced various corporate accountability mechanisms. Under the stated purpose of creating protections beyond Sarbanes-Oxley, SB 523 is California’s attempt to increase shareholders’ and the public’s protection from corporate and limited liability company (“LLC”) misdeeds.

Specifically, SB 523 requires a corporation or LLC, within 30 days of actual knowledge of a specified misdeed (listed below), to either: a) provide written notice to the California Attorney General or an appropriate governmental agency and to its shareholders/investors about the misdeed(s); or b) “abate” the misdeed(s). Actual knowledge is established when a corporate officer or director actually possesses or consciously avoids possessing information about the misdeeds. Because the law does not define “abate,” it is unclear what steps corporations and LLCs may need to take to avoid SB 523’s notice requirement.

SB 523 imposes its notice-or-abate duty when an officer, director, manager or agent commits one of the following acts:

A. Makes a materially false statement or omission intended to artificially increase or decrease the corporation’s stock’s value in a report, exhibit, notice, or statement;

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B. Refuses to make any legally required book entry or to post any legally required notice that would be approved by an audit committee; or

C. Misstates or conceals facts from a regulatory body to avoid a government-imposed duty or prohibition.

Corporations failing to comply with SB 523’s notice-or-abate requirement within 30 days of actual knowledge can face civil penalties up to \$1 million. This law provides for a “good faith” exception to the penalty where the Attorney General determines that the corporation reasonably and in good faith believed that it had complied with the notice requirements.

SB 578 – State Contractors Must Institute “Just Cause” Only Terminations And Forbid Forced Overtime

Although advertised as a law prohibiting the state’s use of goods or services produced by sweatshop labor, SB 578 broadly implicates all state contractors. Specifically, SB 578 forbids the state from contracting with any contractor unless the contractor and his/her subcontractors:

- Maintain a policy forbidding termination without “just cause;”
- Pay wages “in compliance with applicable local, state, and national laws” where the labor is performed;
- Do not utilize “forced labor,” including forced overtime hours. All overtime must be voluntary; and
- Do not subject their workers to physical, sexual, psychological, or verbal “harassment or abuse,” under any circumstances.

SB 578 does not define “just cause” or “harassment or abuse.” Moreover, because all overtime must be voluntary and forced overtime is specifically prohibited, the law appears to outlaw contractors and subcontractors from instituting mandatory overtime for any reason.

SB 578 also requires that state contractors certify that their wares have not been laundered or produced, in whole or in part, by sweatshop labor, forced labor, convict labor, indentured labor, abusive forms of child labor, exploitation of children in sweatshop labor, or associated with these types of activity. State contractors also must

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provide the state with “reasonable access” to their records, documents, agents, employees, and premises to ensure compliance with these requirements.

Absent good faith, state contractors who know or should have known that their products are being made by any of the prohibited labor types may be penalized by:

- Voiding of the state’s contract;
- A civil penalty equaling the greater of \$1000.00 or 20% of the value of the items produced by the prohibited labor; and/or
- Being blacklisted from the state bidder’s list for a period up to 360 days.

Contractors subject to any of the penalties may request an administrative hearing, with the contractor required to pay costs unless prevailing.

SB 578 also provides that knowing false misstatements by contractors in state contracts are criminal misdemeanors. SB 578 also specifies that its remedies and requirements are in addition to those required or specified under any other applicable laws.

AB 76 – Expansion Of Sexual Harassment Law To Include Harassment By Nonemployees

Under existing law, and depending upon the circumstances, employers only are held liable for the harassment of an employee that is committed by a co-worker or supervisor. AB 76 expands the employer’s liability by making an employer liable for harassment of its employees committed by non-employees (e.g., vendors or clients) if the employer knew or should have known about the harassment.

Employers who have a harassing customer, vendor, or client should take immediate corrective action to stop the harassment. Employers also should train their supervisors and staff to report such conduct so that the employer can take prompt, appropriate, remedial action against the non-employee. Moreover, employers’ policies should be amended to reflect this new obligation.

AB 205 – Domestic Partners Granted Comparable Rights To Married Persons

Existing law grants registered domestic partners (“RDPs”) fewer than 20 rights under California law. AB 205 grants RDPs state-law rights almost in parity with married spouses.

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Consequently, in almost all circumstances where a married spouse would have rights and responsibilities, so too now do RDPs. This applies to a broad range of rights and responsibilities, including repayment of debts, divorce, division of community property upon death, and parity in leave statutes.

AB 205 makes RDPs different from spouses on only two levels: a) the ability of married spouses to file joint state income taxes, and b) the requirement of a civil ceremony of some type to symbolically demonstrate the marriage.

AB 205 affects employers by nullifying any distinctions between spouses and registered domestic partners in their policies. Thus, if an employer formerly had a policy whereby employees were not allowed to supervise their spouses, this policy should now apply to preclude supervision of domestic partners, as well. Employers also should change all policies that refer to marriage to include RDPs, and train supervisors and staff to equally apply policies to married employees and RDPs, alike.

AB 226 – Corporate Employers Precluded From Purchasing Life Insurance On Non-Exempt Employees

Last year, the Wall Street Journal printed a story about so-called “dead peasant” insurance, employers insuring their rank-and-file employees’ lives and naming themselves as the beneficiaries. Under existing law, California employers can purchase these policies on their employees only with the employees’ consent.

AB 226 seeks to eliminate “dead peasant” policies altogether by prohibiting insurers from issuing or delivering these policies as to any non-exempt employee and prohibiting employers from purchasing and holding these policies on non-exempt employees. To this end, employers may not make premium payments on affected policies after January 1, 2004. AB 226 also attempts to phase out policies purchased prior to January 1, 2004, by voiding the affected policies upon the earlier of the following dates:

- a. The date that the policy lapses due to the employer being precluded from making premium payments;
- b. The due date of the next premium payment after January 1, 2009; or
- c. January 1, 2010.

Employers holding active “dead peasant” policies purchased prior to January 1, 2004 also must notify insured, non-exempt employees (including former non-exempt employees) about the policies no later than April 1, 2004.

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AB 226 does not affect California employers' ability, with the employees' consent, to name themselves as the beneficiaries of policies insuring the lives of their exempt employees.

SB 478 – Unpaid Leave Available For Victims Of Crimes

As with last year's bill requiring employers to provide leave for victims of sex crimes, SB 478 imposes an additional leave requirement on employers. Under SB 478, employers must permit employees who are the victims of crime to attend judicial proceedings relating to the crime. Employers also must permit the victim's immediate family members, registered domestic partner, and child to take such a leave.

Employees, where possible, must provide advance notice of the absence. If an employee cannot provide advance notice, the employee must provide documentation evidencing the proceeding within a reasonable time after the absence. Employees also have the option of using personal time, vacation time, sick leave, or other compensated leave to receive payment during the time missed because of the judicial proceeding.

Employers must keep confidential the records of the employee's absence under SB 478 and cannot discriminate in any way against leave-taking employees. Employees can file a complaint with the Division of Labor Standard Enforcement against employers who discriminate or retaliate against them.

SB 179 – Employers Forbidden From Entering Into Contracts Where The Employers Know Or Should Know That The Contract Fails To Provide Sufficient Funds To Comply With Labor Laws And Regulations

SB 179 adds to existing laws regarding the procurement of construction, farm labor, garment, janitorial, and security-guard services. Under SB 179, persons entering into contracts for these services may be liable for civil penalties if the persons know or should have known that the contract fails to provide sufficient funds to allow the labor contractor to comply with all applicable labor laws and regulations. Persons entering into these contracts pursuant to collective bargaining agreements or for labor or services on a home residence are excluded from SB 179's requirements.

A rebuttable presumption of compliance with SB 179 is established if there is a written contract specifying:

- The identities of the contracting parties;
- A description of the labor performed under the contract;

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- The contractor's state tax-identification number;
- The contractor's workers' compensation policy, complete with that contractor's insurance provider;
- The vehicle identification number of all vehicles to be used pursuant to the contract, as well as these vehicles' insurance information;
- The address of any property that will "house" workers in connection with the contract;
- The total number of workers, as well as these workers' wage rates and pay dates;
- The cost of the contract;
- The total number of independent contractors that will be used under the contract, as well as these independent contractors' license identification numbers; and
- The contracting parties' signatures and the signatures' date.

If the contract estimates the number of workers, number of independent contractors, or their associated information, the contracting parties have a continuing obligation to reduce the correct information to writing as soon as it is known. Material changes to the contract must be in writing and must include information about any of the above elements affected by the changes. The written contract must be retained for at least four years after its termination.

Employees aggrieved by any violation of SB 179 may bring civil actions to recover the greater of the employees' actual damages or \$250.00 for an initial offenses. However, subsequent violations increase the civil penalties to \$1000.00 *per employee*. Employees also may seek injunctions against the violating conduct. Finally, employees may recover costs and attorneys fees associated with prosecuting their claims.

AB 276 – Increased Penalties For Labor Code Violations

Of many changes to the California Labor Code, AB 276 increases the first-time penalty for failure to pay wages or unlawfully withholding wages from \$50 to \$100. Subsequent, willful or intentional violations increase from \$100 to \$200.

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AB 276 also affects state-contractor licensees by increasing the penalty from \$100 to \$200 for persons who: (a) do not hold a valid state contractor's license; and (b) employ workers for work for which a license is required.

SB 515 – Employers Are Precluded From Using Anti-SLAPP Motions

Under existing law, defendants who engage in free speech activity and are sued because of that activity can utilize an Anti-SLAPP motion. Anti-Strategic Lawsuit Against Public Participation motions are special motions to strike causes of action arising from a defendant's right to free speech. Anti-SLAPP motions not only remove the offending cause of action, they also stay discovery proceedings of the underlying case until the conclusion of any appeal based on the granting or denial of that motion.

Employers had used anti-SLAPP motions to combat employees or former employees from defaming their current or former employers or attempting to interfere with their current or former employers' business or contracts.

SB 515 now creates an exception to businesses' use of these motions when two conditions exist:

- a. The statement or conduct subject to a suit where an anti-SLAPP motion could normally have been brought was made in the course of delivering the business's goods or services or is for promoting and/or advertising the business's goods or services; AND
- b. The statement's or conduct's intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to a potential buyer or customer.

If employers bring this motion and the above two conditions exist – win or lose – the typical discovery stay pending an appeal's outcome no longer exists and discovery in the underlying suit can continue.

Employers currently involved in litigation with a defamation or interference with prospective economic advantage claim should discuss with counsel whether to file an anti-SLAPP motion prior to SB 515's January 1, 2004 effective date.

AB 330 – Meal Period Exception Requirement Exception For Wholesale Baking Industry

Under existing law, generally, employers must provide a half-hour unpaid meal period for every five hours worked. AB 330 affects a very small segment of the

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employer population by exempting wholesale baking employees covered by a valid collective bargaining agreement from the meal period requirement. If your business might fall within this exception, you should contact this law firm to discuss your strategic planning options.

H.R. 2622 – The Federal Fair And Accurate Credit Transactions Act Of 2003 – Employer Friendly Employee Investigations

Existing federal law, the Fair Credit Reporting Act ("FCRA"), required employers using outside agencies to investigate employee misconduct to obtain the employee's approval prior to conducting the investigation. A new federal law, H.R. 2622, removes this absurd tether and allows employers, without obtaining the investigated employee's permission, to use outside investigative agencies to conduct investigations into:

- Suspected misconduct relating to employment; or
- Employee compliance with:
 - Federal, state or local laws or regulations;
 - The rules of "self-regulatory organizations" (such as boards of trade, futures associations, national securities exchange, registered securities association, or registered clearing agency, or the Public Company Accounting Oversight Board); or
 - Any preexisting, *written* employer policies.

California's equivalent to the FCRA, the Investigative Consumer Reporting Agencies Act ("ICRAA"), also includes a "suspicion of wrongdoing or misconduct" exception to its requirements about informing the investigated employee prior to an outside investigator conducting a workplace investigation. Thus, coupling federal and California law, it appears that employers conducting workplace investigations for employee misconduct no longer need their employees' permission prior to using outside investigators.

Formerly, upon the conclusion of an investigation (assuming that the employee granted the employer permission to conduct the investigation with the outside investigator), employers needed to provide the investigated employee with a copy of the investigator's complete report, including sources, prior to taking an adverse action based on the report. This pre-adverse action report needed to be coupled with an attachment

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that detailed the investigated employee's rights under the federal Fair Credit Reporting Act. Then, after the employer took an adverse action based on the investigator's report, the employer needed to provide the employee with information about the investigating agency that conducted the investigation, a statement that the employee could get another free copy of the report, and instructions on how to dispute the report's findings.

Now, under H.R. 2622, if an employee investigation results in an adverse employment action, such as a demotion, failure to promote, discipline, or termination, the employer only must disclose a summary of the investigator's report and need only make this disclosure after the employer takes its adverse action. However, H.R. 2622 does not detail the time period after the adverse action within which the employer must disclose the report's summary. This summary, unlike prior law, only must contain the "nature and substance" of the investigator's report and need not include the sources of information the investigator used to prepare the report.

AB 1719- Clarifications To Existing Laws

This bill amends four sections of the California Labor Code. First, this bill requires the Division of Occupational Safety and Health ("DOSH") to notify a complainant within 14 calendar days of taking any action on a complaint. Additionally, this bill requires DOSH to annually compile and release data pertaining to complaints received and citations issued on its web site . This bill also requires DOSH to provide its criminal investigative arm, the Bureau of Investigation ("BOI"), with any documents it determines will be helpful to BOI in its investigation of a case. Finally, this bill requires BOI to notify the appropriate prosecuting authorities within 14 calendar days of making a determination that there is legally insufficient evidence of a violation of the law, and to provide a statement of the rationale for such a determination.

Second, this bill addresses the electrician certification process. In 1998, the Legislature established a certification program for electricians to be implemented by July 1, 2001, a deadline that has been repeatedly extended. This bill authorizes the California Apprenticeship Council to extend the deadline until January 1, 2007, if it concludes that the existing deadline will not provide individuals sufficient time to obtain certification. This bill also specifies that Division of Apprenticeship Standards shall provide for the administration of the certification tests in Spanish, and to the extent possible, other non-English languages spoken by a substantial number of applicants.

Third, this bill makes a technical change to existing law exempting specified physicians from the payment of overtime to make that language consistent with other exemption language contained in the law.

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And finally, this bill contains a provision addressing the existing law in the workers' compensation benefit system that provides for an alternative dispute resolution procedure (i.e., "carve out") that allows employers and unions in the construction, aerospace, and timber industries to create their own alternatives for workers' compensation benefit delivery and dispute resolution under a collective bargaining agreement. Eligibility of parties to participate in a program must be approved by the Administrative Director of the Division of Workers' Compensation.

Executive Order S-2-03

Shortly after taking office, Governor Schwarzenegger signed Executive Order S-2-03. Typically, state administrative agencies, such as the Department of Fair Employment and Housing or the Occupational Safety and Health Standards Board, create regulations based upon existing and new laws. This Executive Order suspends all pending administrative agencies' regulations until May 15, 2004. This Executive Order will not stay, however, pending laws (such as those new statutes detailed in this email).

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We encourage you to call your SFSSW attorney at (310) 288-3980 (Please update your phone list with the firm's new telephone number.) or email them at their address listed below to discuss any of the issues from this E-Alert and their impact on your company's operations.

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Attachment A – SB 777 Whistleblower Notice

[NOTE: This Notice must be printed in a font size larger than 14-point.]

Employees' Rights and Responsibilities Under Cal. Labor Code Section 1102.5

Under California Labor Code Section 1102.5, employees have the following rights and responsibilities:

1. Employers may not make, adopt, or enforce any rule, regulation, or policy preventing employees from disclosing information to a government or law enforcement agency, if the employees have reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
2. Employers may not retaliate against employees for disclosing information to a government or law enforcement agency, if the employees have reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
3. Employers may not retaliate against employees for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
4. Employers may not retaliate against employees for having exercised their rights under the above paragraphs 1, 2, or 3 in any former employment.
5. The provisions set forth above do not apply to rules, regulations, or policies which implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege, physician-patient privilege, or trade-secret information.

The Attorney General's hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees is (800) 952-5225.