

EMPLOYMENT LAW UPDATE

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**2001 EMPLOYMENT LAW CHANGES**

by Douglas J. Melton

The California Legislature passed several new employment law bills during its 2000 session which took effect January 1, 2001. The following is a brief summary of some of the more significant changes.

**Minimum Wage**

The California minimum wage is now \$6.25 per hour – up from \$5.75 per hour. It will increase again, to \$6.75 per hour, on January 1, 2002.

**Disability Discrimination**

AB 2222 expands the definition of “physical and mental disability” under the California Fair Employment and Housing Act (“FEHA”) and removes California from conformity with the federal Americans With Disabilities Act (“ADA”). Under AB 2222, a physical or mental disability under FEHA includes one that merely “limits” a major life activity. This is significantly different from the ADA, which defines a physical or mental disability as an impairment that “substantially limits” one or more major life activity.

Cases have been dismissed before trial on the grounds that a physical or mental impairment did not “substantially limit” any major life activities. Removing the term “substantially” from the definition makes it significantly easier for plaintiffs to establish a disability under California law.

This, and other expanded definitions in AB 2222, mean greater exposure for California employers. Employees will likely now bring suits in State Court rather than Federal Court.

Employers who have structured their programs and employee manuals/handbooks to conform to the ADA should now revise them.

**Sexual Harassment**

AB 1856 now makes non-supervisory employees potentially personally liable for sexual harassment – regardless of whether the employer knows about, or attempts to prevent, the harasser’s actions. This bill overturns existing California case law which provided that non-supervisory employees who sexually harassed a co-worker could not be held personally liable under FEHA.

(AB 1856 is also the subject of a separate Long & Levit Employment Law Update which we will circulate shortly.)

One likely result of this bill is higher litigation costs for California employers. Under the Labor Code, an employer may be required to indemnify an employee for litigation costs associated with a co-worker sexual harassment suit even if the employer is not a defendant.

### **Domestic Violence**

AB 2357 prohibits employers with 25 or more employees from discharging or discriminating against a domestic violence victim who takes time off from work to seek medical attention for resulting injuries, to obtain social services (including psychological testing) or to participate in safety planning (including temporary or permanent relocation).

### **Volunteer Firefighters/Emergency Personnel/Peace Officers**

AB 2535 provides time off to volunteer firefighters to attend fire or law enforcement training. Volunteer firefighters who work for employers with 50 or more employees shall be permitted to take temporary leaves of

absence, not to exceed 14 days per calendar year.

If an employer discharges, threatens to discharge, demotes, suspends or otherwise discriminates against a volunteer firefighter for taking time off for training, the employee is entitled to reinstatement and reimbursement for lost wages.

SB 1353 extends to emergency personnel and peace officers the existing law forbidding an employer from discharging or discriminating against an employee for taking time off to perform emergency duties as a volunteer firefighter.

### **Conclusion**

As with all new legislation, these new laws will be clarified by the judiciary as employers and employees stake out conflicting interpretations and present their disputes to the courts. Until then, employers must do their best to predict how the courts will rule.

Should you have any questions or concerns about any of these new laws, and how they may affect your business, do not hesitate to contact Long & Levit's employment lawyers.

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