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2004 California Employment Law Survey

"This year has been quite a significant legislative year in the State of California. The following is a brief summary of new legislation affecting employers with California operations.

Naturally, the interpretive applicability of these newly enacted laws will be further molded, and challenged, through the California judicial system. Nevertheless, employers should review, understand and alter their policies as needed in order to conform to the laws, as written, until further clarification is provided."

AB 205 – Domestic Partner Rights and Responsibilities Act

This newly enacted statute goes into effect in January 2005 and provides extended benefits for registered domestic partners of employees. Bill 205 and provides a broad range of benefits and protections to registered domestic partners. Most notably, employee-related benefits traditionally reserved for spouses are expanded, as well as coverage under the California Family Rights Act.

AB 76 – Third Party Harassment

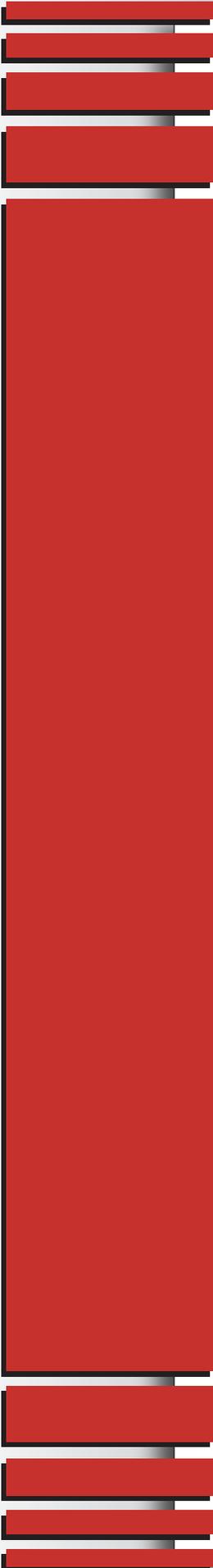
Bill 76 extends the obligations of employers under California's Fair Employment and Housing Act ("FEHA") to include the prevention of harassment of an employee by any person, including third parties. Accordingly, under these circumstances, employers may now be liable for the conduct of customers and clients. The amendment to the Government Code holds an employer responsible for failing to take immediate and appropriate corrective action to prevent harassment of an employee by any person, including third parties, once the employer knows or should have known of the offensive conduct. This bill was a direct attempt by the legislature to reverse *Salazar v. Diversified Paratransit, Inc.*, 103 Cal.App.4th 131 (2002) which was under review with the California Supreme Court. The *Salazar* decision held that an employer's duty to prevent harassment did not extend to harassment by an employer's customers or clients. Bill 76 was signed by outgoing Governor Davis on October 3, 2003.

AB 196 – Gender Identity Discrimination

Bill 196 extends the provisions of FEHA to protect against gender identity discrimination by including "gender" in the Act's definition of "sex." While the new law allows employers to require employees to comply with reasonable work place appearance, grooming and dress standards, it explicitly permits employees to appear in dress consistent with their gender identities. Bill 196 was signed by outgoing Governor Davis on August 2, 2003.

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SUNSET MEDIA TOWER
6255 SUNSET BOULEVARD
SUITE 714
HOLLYWOOD, CA 90028
PHONE: 323.960.2600
FAX: 323.417.5049

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SB 179 – Labor Contracts

Senate Bill 179 adds provisions to the Labor Code which provide for an award of civil penalties and liability against any person or entity who enters into a labor contract for construction, farm labor, garment, janitorial or security guard services, when that person or entity knows (or should know) that the contract does not produce funds sufficient to allow the labor contractor to comply with applicable laws or regulations governing the labor or services to be provided.

Senate Bill 578 – Sweatshop Labor

Senate Bill 578 amends sections of the Public Contract Code and expands the prohibition against forced, convict, abusive child and indentured labor to public work contracts, including those contracts associated with the manufacture of garments for state uniforms. The new law also requires contractors to ensure that their subcontractors comply in writing with a specified code of conduct under penalty of perjury.

Assembly Bill 223 – Attorneys’ Fees

Amending the provisions of Section 98.2 of California’s Labor Code, Bill 223 provides that an employee who appeals the decision of a Labor Commissioner’s award will be deemed the “prevailing party” for the purposes of the Code. Thus, that employee is now able to recover attorneys’ fees and costs so long as the judgment on appeal is generally in his or her favor. In other words, if the employee receives *any* amount of money, even if the same amount or less than awarded by the Labor Commissioner, the employee is entitled to recover attorneys’ fees. This law explicitly overturns *Smith v. Rae-Venter Law Group*, 29 Cal.4th 345 (2002). That case held that an appealing party was not entitled to their reasonable attorneys’ fees and costs unless the court judgment on appeal was more favorable than the Labor Commissioner’s original award.

Assembly Bill 226 – Life Insurance

Bill 226 prohibits corporations from designating themselves as beneficiaries on life insurance policies taken out on their rank-and-file employees. Nothing in the new law, however, precludes companies from taking out such policies on their executives.

Assembly Bill 276 – Increased Penalties

Bill 276 modifies various sections of the Labor Code to increase fines for employers on at least 158 different potential violations of California’s Labor Code. For example, the penalties for such wage and hour violations as unlawfully withholding wages or failing to pay wages timely are now doubled.

Senate Bill 777 – Whistle Blower Protection

This bill amends sections of California's Labor Code by extending statutory "whistle-blower" protections to employees who report violations of a state or federal statute, rule or regulation, or who refuse to participate in an activity that would result in a violation of a state or federal statute, rule or regulation. It also prohibits retaliation for exercising these rights including retaliation for rights exercised in conjunction with a former employer. Additionally, the bill establishes provisions for a "whistle blower hotline" within the office of the Attorney General to receive telephone reports of violations of state or federal statutes, rules or regulations or fiduciary responsibilities by an employer. The bill also requires the Attorney General to refer calls received on this hotline to the appropriate governmental authority, as specified.

Senate Bill 796 – Labor Code Private Attorney General Act

As noted in the Luti Law Firm client alert of last month, Bill 796 has created the Labor Code Private Attorney General Act of 2004. Basically, this legislation – which goes into effect January 1, 2004 – authorizes employees to act as private attorneys generals and thus seek civil fines and penalties previously reserved for state enforcement agencies in conjunction with an employee's claims (on behalf of the employee and as a representative of other employees) for wage and hour violations. The Act also provides for the recovery of costs and attorneys' fees.

Anthony N. Luti is a founding member of The Luti Law Firm, where his practice is focused on Civil Rights, Labor and Employment, Entertainment and General Commercial Litigation.