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The Berlin Brief

For Clients and Friends of The Berlin Law Firm

REQUIRED POSTERS & PAMPHLETS

Several new/ revised posters and pamphlets must be displayed:

- Updated DFEH sexual harassment (DFEH-185) & pregnancy leave (DFEH-186) notices;
- Updated minimum wage poster (MW-2007);
- Updated EDD publications on paid family leave & state disability insurance.

NEW LEAVE LAWS

Military Spouse Leave. In California employers with 25 or more employees must give an employee who works at least 20 hours per week and who is the spouse of a member of the military up to 10 days of unpaid leave when the spouse is on leave from active duty in the U.S. Armed Forces, Reserves, or National Guard. Although the law does not specifically state this, "spouse" includes a registered domestic partner because California Family Code section 297.5 provides that registered domestic partners must be granted the same rights as those granted to spouses. The employee must give two days' notice and provide appropriate written documentation.

New Laws Effect California Employers

This newsletter is intended to update you on several new laws that impact California employers in 2008. It is important to comply with these new laws by reviewing your policies and practices, making any necessary revisions, and communications with your supervisors and managers.

WAGE AND HOUR ISSUES

Minimum wage increase. California minimum hourly wage increases from \$7.50 to \$8.00 effective January 1. As a result (a) the overtime rates for minimum-wage earners increases; (b) the minimum "tool rate" for employees required to use their own tools as a condition of employment without employer compensation for the cost of the tools increases to \$16.00 per hour; (c) the minimum salary for exempt status (which is double the minimum wage) increases to \$33,280 per year (\$2,773.34 per month); (d) the split-shift premium, which is payable at one hour at the state minimum wage to employees working a "split shift" goes up to match the new minimum wage; (e) the maximum amount of meal and lodging that can be credited against the minimum wage increases by 6.7%; (f) for commissioned salespersons to be exempt from overtime he/she must be paid more than \$12.01 per hour; and (g) the minimum regular hourly rate under the collective bargaining opt-out from overtime increases to \$10.40 per hour.

Restricted Employer use of Social Security Numbers. Labor Code section 226 prohibits an employer from including more than the last four digits of an employee's social security number or an existing employee identification number on an itemized pay statement.

Reduced hourly rate for the "computer exemption." Labor Code section 515.5 reduces the hourly rate that computer employees must earn to be exempt from California's overtime requirements. The former minimum hourly rate was \$49.77, is now reduced to \$36.00. This amount is adjusted annually by the Division of Labor Standards Enforcement.

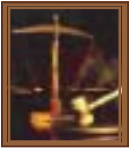
IRS mileage rate increased. The IRS increased the standard mileage rate commonly used to reimburse employees for business use of a car from \$.485 in 2007 to \$.505 per mile.

RETIREE HEALTHCARE PLANS

New EEOC regulations state that an employer can reduce or eliminate health benefits for retirees when they turn 65 and become eligible for Medicare. Employers can have two classes of retirees and two levels of benefits: (1) retirees who are younger than 65 and have greater benefits, and (2) retirees who have turned 65 and have lesser or no benefits. A younger retiree can have benefits reduced or eliminated when he/she turns 65. Additionally, an employer can reduce or eliminate health benefits provided to the spouse or dependents of a retired worker 65 or older, regardless of whether benefits for the retiree are changed.

"HANDS FREE" DEVICE FOR CELL PHONE USAGE

Effective July 2008, anyone in California who wishes to drive and talk on a cell phone must use a "hands free" device. Employers with employees who drive as part of their jobs should implement a policy to comply with this law.



First Class Mail

***For Clients and Friends
of The Berlin Law Firm***

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**comments, requests for clarification
or questions are welcome**

Information contained in this newsletter is not intended as legal advice for a particular situation but reflects frequently asked questions or client concerns. If you have comments, questions or need clarification, we welcome your inquiries.

— Phil Berlin (818) 558-1088

EARNED INCOME TAX CREDIT

Employers must now notify employees that they may be eligible for the federal earned income tax credit within one week before or after the date the employer provides an annual wage summary (W-2 or 1099). An employer cannot substitute a poster, email, or intranet posting for individual notice. The notice must be given to the employee in person or mailed to the employee at the employee's last known address. The notice must contain the following language:

BASED ON YOUR ANNUAL EARNINGS, YOU MAY BE ELIGIBLE TO RECEIVE THE EARNED INCOME TAX CREDIT FROM THE FEDERAL GOVERNMENT. THE EARNED INCOME TAX CREDIT IS A REFUNDABLE FEDERAL INCOME TAX CREDIT FOR LOW-INCOME WORKING INDIVIDUALS AND FAMILIES. THE EARNED INCOME TAX CREDIT HAS NO EFFECT ON CERTAIN WELFARE BENEFITS. IN MOST CASES, EARNED INCOME TAX CREDIT PAYMENTS WILL NOT BE USED TO DETERMINE ELIGIBILITY FOR MEDICAID, SUPPLEMENTAL SECURITY INCOME, FOOD STAMPS, LOW-INCOME HOUSING OR MOST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PAYMENTS. EVEN IF YOU DO NOT OWE FEDERAL TAXES, YOU MUST FILE A TAX RETURN TO RECEIVE THE EARNED INCOME TAX CREDIT. BE SURE TO FILL OUT THE EARNED INCOME TAX CREDIT FORM IN THE FEDERAL INCOME TAX RETURN BOOKLET. FOR INFORMATION REGARDING YOUR ELIGIBILITY TO RECEIVE THE EARNED INCOME TAX CREDIT, INCLUDING INFORMATION ON HOW TO OBTAIN THE IRS NOTICE 797 OR FORM W-5, OR ANY OTHER NECESSARY FORMS AND INSTRUCTIONS, CONTACT THE INTERNAL REVENUE SERVICE BY CALLING 1-800-829-3676 OR THROUGH ITS WEB SITE AT WWW.IRS.GOV.

NEW I-9 FORM

Employers should be complying with the new I-9 requirements that became effective in late 2007. All new employees should complete the new I-9 form. This form expands the list of acceptable employment authorization documents to include employment authorization documents issued by the U.S. Citizenship & Immigration Services. It also eliminates an employer's ability to accept a number of documents, including a Certification of U.S. Citizenship, Certificate of Naturalization, Refugee Travel Document and Alien Registration Receipt Card.
