



HILL, FARRER & BURRILL LLP

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## **HILL, FARRER & BURRILL HIGHLIGHTS NINE NEW EMPLOYMENT REGULATIONS THAT WILL CHALLENGE CALIFORNIA EMPLOYERS IN 2004**

**LOS ANGELES** – California has the worst business climate of the 50 states, according to a new California Business Roundtable study. The slew of new employment laws that were passed last year will further weaken the State’s ability to hold onto jobs and tax revenues and hamper employers’ efforts to expand, increase their employee base and remain competitive, according to employment law experts at Hill, Farrer & Burrill LLP. All these new laws add to the soaring costs of doing business in the state and range from mandated employee health care coverage and domestic partner rights to employer responsibility for sexual harassment by vendors or others outside the company.

“The past year saw the legislature enact nine regulations that challenge the business community and may set the stage for further flight from California,” noted Jonathan M. Brandler, a partner in Hill, Farrer & Burrill’s highly regarded labor and employment group. “Far from helping employers create new jobs, these laws substantially add to the cost of doing business, increase administrative burdens and encourage yet more lawsuits.”

Brandler highlights the new laws and what they will mean to employers.

### **Health Insurance Act of 2003 (SB 2)**

Mid-sized employers with 20-199 employees must provide health insurance to employees and pay 80 percent of the premiums for that coverage by January 1, 2007. If the legislature fails to enact a tax credit of 20 percent of the net costs for this coverage by that date, employers in this category will not have to comply.

Companies with 200 or more employees must provide insurance coverage for employees and their dependents and pay 80 percent of the premiums for both by January 1, 2006. The failure to do so will require them to pay a fee or tax to the State to purchase the necessary coverage under a program that requires basic health coverage and prescription drug coverage for employees and dependents.

For companies that do not already provide the required level of benefits, SB 2 will add substantially to their cost of doing business. However, it also will help to make unionized employers more competitive.

### **Labor Code Private Attorney General Act 2004 (SB 796)**

The new law permits an employee to bring a civil suit for Labor Code violations and collect 25 percent of the penalties plus attorneys’ fees. Previously, only the Labor Commissioner or other state agencies could collect these penalties. A companion law – AB 276 – doubles the penalties for employers who withhold wages or fail to pay them.

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“This new ‘bounty hunter’ law will likely open a flood gate of litigation against California employers and lead to more class action wage and hour lawsuits,” Brandler warned, noting that employers need to focus their attention on wage and hour compliance.

**Domestic Partner Rights and Responsibilities Act of 2003 (AB 205)**

Under AB 205, California employers must grant registered domestic partners the same rights, protections and benefits as married couples. They must abide by the California Family Rights Act, providing employees with unpaid leave to care for a seriously ill registered domestic partner or that individual’s child and for child bonding. The new law also protects registered domestic partners against discrimination under the Fair Employment and Housing Act. However it is unclear whether all benefits provided to married couples must be extended to domestic partners. Leave policies will have to be rewritten to comply with the law which comes into effect January 1, 2005, when employers are likely to experience a spike in the number of employees applying for leave.

**Domestic Partner Benefits for State Contractors (AB 27)**

Companies that contract with State agencies for goods or services in the amount of \$100,000 or more will have to revise their policies to provide the same benefits to domestic partners as they do to their married employees. AB 17 prohibits state agencies from hiring contractors that fail to do so.

**Third-Party Harassment Protection (AB 76)**

Although employers have been held liable for the sexual harassment of an employee by company supervisors or other employees, AB 76 extends that responsibility to outside third parties. If the employer knows or should have known of any harassment by customers, clients, vendors or others and fails to take immediate and appropriate action, the company is vulnerable to a lawsuit. Policies should be rewritten to prohibit harassment by outside third parties and provide a procedure for reporting violations, Brandler counsels.

**Gender Identity Discrimination (AB 196)**

AB 196 extends the Fair Employment and Housing Act’s prohibition against sex discrimination and harassment to include gender identity (typically transsexuals/transvestites). Gender-specific dress codes are still lawful, but employers must allow cross-dressers who identify themselves as the opposite sex to do so at work. Dress codes must be written to comply with the new law.

**Leave for Crime Victims (SB 478)**

Employers must not fire or discriminate against a crime victim or members of a crime victim’s immediate family for being absent from work to attend a court hearing.

**Whistleblower Protections (SB 777)**

The new “whistleblower” law prohibits employers from retaliating against a current employee who reports a violation of a state or federal statute, law or regulation, or who refuses to participate in such a violation. SB 777 also adds a civil penalty of up to \$10,000 for such retaliation. Under certain

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circumstances the law also offers protections to employee applicants. If an employee demonstrates that blowing the whistle on company practices was a factor in his/her demotion or firing, the burden of proof is on the employer to provide clear and convincing evidence that there were legitimate, independent reasons for the action it took. SB 777 also establishes a “whistleblower hot line” within the Office of the Attorney General – a number that employers must post in the workplace together with a list of employee rights under the whistleblower laws.

**Paid Family Leave (SB 1661)**

Previously, employees who took family leave did so on an unpaid basis. SB 1661 was designed to set up the Paid Family Leave Fund, which will be administered by the California Employment Development Department (EDD). Employee contributions to this fund started on January 1, 2004 and weekly benefits can be claimed after June 30, 2004. They range from \$50 to \$728 a week and will take seven days to kick in. They will be available for up to six weeks. Employers must post the EDD notice – DE 1867A – in the workplace and provide each new employee and every employee taking family leave with a copy of EDD’s Paid Family Leave form – DE 2511. Employers may require an employee to use two weeks of vacation before receiving benefits.

**About Hill, Farrer & Burrill, LLP**

Hill Farrer & Burrill LLP is a full-service California law firm that has served the expanding litigation and transaction needs of the business community for 80 years, working with America’s corporate giants, privately held companies and entrepreneurs. The firm offers strong expertise in labor and employment, real property, commercial and corporate law, intellectual property, environmental law, employee benefits, bankruptcy, and tax and estate planning. The firm’s attorneys are known for the business perspective they bring to solving complex legal issues and have an outstanding track record in the courts and around the negotiating table.