



# The Personnel File

NEWS AND DEVELOPMENTS IN EMPLOYMENT LAW FOR CALIFORNIA'S EMPLOYERS

## **2010 Employment Law Update for California Private Sector Employers**

Ring in the New Year and a new decade in 2010 also rings in some new laws for California's private sector employers. Fortunately, there are only a few new laws to look out for this year. Below is a summary of the more relevant new state and federal laws and regulations that will affect employers:

### **California**

#### **New Unpaid Leave of Absence for Employees who are Volunteers of the California Wing of the Civil Air Patrol (AB 485)**

Effective January 1, 2010, employers with more than 15 employees are required to provide not less than 10 days per year of unpaid leave to employees who are volunteer members of the California Wing of the Civil Air Patrol and are directed to respond to an emergency operational mission. To qualify for the leave, the employee must have been employed by that employer for at least 90 days immediately preceding the commencement of leave.

The employee is required to give the employer as much notice as possible of the intended dates the leave would begin and end. Unlike other leave laws, an employer cannot require an employee to exhaust accrued leaves before using the 10 days of Civil Air Patrol unpaid leave. However, it appears that an employee could voluntarily choose to use accrued leave to coincide with these leaves.

When the Civil Air Patrol leave is exhausted, the employer is required to restore the employee to the same position he or she held when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment, unless the employee is not restored because of conditions unrelated to the employee's exercise of the leave rights.

This new law is codified at Labor Code sections 1500-1507.

## **Federal**

### **IRS Mileage Reimbursement Rate Decreased to 50 Cents Per Mile in 2010**

Effective January 1, 2010, the IRS mileage reimbursement rate has been decreased to 50 cents per mile from last year's rate of 55 cents. This mileage reimbursement rate is an effective tool for reimbursing employees for personal vehicle usage incurred within the course and scope of employment.

The California Supreme Court ruled in 2007 that employers can also satisfy their obligation under Labor Code section 2802 to reimburse employees for personal vehicle expenses by using a "lump sum" method of providing extra compensation to an employee. *Gattuso v. Harte-Hanks Shoppers* (2007) 42 Cal. 4th 554. The Court noted that the "lump sum" method would satisfy the requirements of Labor Code section 2802 so long as the extra compensation covers the employee's expenses incurred and is properly identified as a reimbursement payment as opposed to wages.

Even with the Court's limited approval of the "lump sum" method, LCW still recommends that employers use the "IRS mileage rate" method for reimbursing employees for vehicle expenses. The "IRS mileage rate" method avoids the issue of distinguishing wages from reimbursement payments as part of an employee's overall compensation and creates a less burdensome way to track employee vehicle expenses through miles driven in the course and scope of employment. While the *Gattuso* case makes it clear that the "IRS mileage rate" method is not necessarily presumptive under section 2802, it also sets a high bar for employees to establish that such reimbursement methods do not fully cover vehicle expenses incurred in the course and scope of employment.

### **New Notice Requirement Under Federal Genetic Nondiscrimination Act (GINA).**

The federal Genetic Information Nondiscrimination Act of 2008 (GINA) protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. When GINA was enacted, California's Fair Employment and Housing Act (FEHA) had already prohibited discrimination based on genetic characteristics.

Effective November 21, 2009, GINA requires employers to post a notice regarding its protections provided to applicants and employees in a place visible to all employees. Employers should check their employment postings to ensure that they are complying with this new requirement.

### **COBRA Subsidy Extended for Involuntary Terminations Through End of February 2010.**

As we reported in our March 2, 2009 *Personnel File*, the American Recovery and Reinvestment Act (ARRA) included a 65% COBRA subsidy for employees involuntarily terminated from employment between September 1, 2008 and December 31, 2009. California enacted AB 23 on

May 12, 2009, to apply this ARRA subsidy to Cal-COBRA beneficiaries (employers with 2 to 19 employees).

On December 19, 2009, the 2010 U.S. Department of Defense Appropriations Act amended ARRA to extend the COBRA premium reduction. Under the amendment, individuals involuntarily terminated between September 1, 2008 and February 28, 2010 qualify for the subsidy. Moreover, the premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months (instead of nine months under the original ARRA provisions). The Department of Labor recently published a fact sheet regarding the parameters of the COBRA subsidy. The fact sheet can be found at: <http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html>

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