

# Client Alert

January 2008

## NEW EMPLOYMENT LAWS AND CASES FOR 2008

New laws and new court decisions present an ever-changing legal landscape for California employers. Here are some of the most important employment-related laws taking effect in 2008 and some recent court decisions with important implications for employers.

### New Laws

#### Leave of Absence for Military Spouses

Employers with 25 or more employees must provide up to 10 days of unpaid leave when a service member is home on leave from duty, for employees who work at least 20 hours per week. Independent contractors are not eligible.

#### Hands-Free Cell Phone Law

Drivers are prohibited from using a cell phone while operating a moving vehicle unless the phone is designed and configured for hands-free listening and talking and is so used. Effective July 1, 2008.

#### No Social Security Numbers on Employees' Itemized Wage Statements

Wage statements required by California law (regular itemized statements showing gross wages, hours worked, deductions, etc.) shall not include the employee's social security number, but must include the last four digits of the social security number or an employee identification number.

#### Increase in the California Minimum Wage

The California minimum wage increased to \$8 per hour effective January 1, 2008. This is the highest minimum wage in the country.

### New Cases

#### Employee Arbitration Agreements: Class Action Waivers

The California Supreme Court held that class action waivers in arbitration agreements between employers and employees may or may not be enforceable depending upon whether class arbitration would be a significantly more effective way of vindicating employee rights than individual arbitration. (*Gentry v. Superior Court* (2007))

#### Employee Arbitration Agreements: New Pitfalls For Employers Seeking Enforcement

Several decisions by the California Courts of Appeal have invalidated employee arbitration agreements. The courts have ruled such agreements "unconscionable" and therefore unenforceable when presented to an employee through interoffice mail, without an explanation that the employee could opt out of the agreement (*Murphy v. Check 'N Go of California*); when the arbitration agreement was contained in an employee handbook rather than a separate arbitration agreement (*Mitri v. Arnel Management Company*).

### **Employees With Disabilities Have the Burden of Proving They Are Qualified for Their Jobs**

The California Supreme Court held that California's Fair Employment and Housing Act places the burden on employees with disabilities to prove they can perform all essential duties of their jobs, rather than on the employer to prove employees are not qualified for their jobs. This is consistent with the burden of proof under the federal American's With Disabilities Act (ADA). (*Green v. State of California*)

### **Net-Profit-Based Incentive Plans for Employees Are Lawful**

The California Supreme Court held that a supplementary incentive compensation plan based on store profits, designed to reward employees beyond their normal pay, did not violate California's wage protection laws even though the profit calculation included store expenses such as workers' compensation costs, breakages and third party claims, even though such costs may not be deducted from regular wages. (*Prachasaioradej v. Ralphs Grocery Co.*)

### **Three-Year Statute of Limitations for Payments for Missed Meal and Rest Periods**

The California Supreme Court held that the one hour of additional pay employers are required to pay employees when the required meal and rest periods are not provided is a wage to the employee rather than a penalty assessed on the employer, and therefore is subject to a three-year rather than a one-year statute of limitations. This expands potential employer liability in class actions and individual employee lawsuits over missed meal and rest periods. (*Murphy v. Kenneth Cole Productions*)

*If you have questions regarding these recent developments, or would like assistance in reviewing your employee manuals, practices and procedures, please contact Jeffrey W. Kramer at (310) 789-1221 or [jkramer@troygould.com](mailto:jkramer@troygould.com)*