

## BILLS OF INTEREST

### SEPTMEBER 2009

#### CHAPTERED BILLS: NEW LAWS

- ❖ **AB 23 - Cal-COBRA Amended to Conform to ARRA (Chapter 3):** On May 12th, Governor Schwarzenegger signed AB 23. This bill amends California's health benefits continuation coverage laws (Cal-COBRA) to conform to the premium subsidy provisions in the American Recovery and Reinvestment Act of 2009 (ARRA). AB 23 took effect immediately.
- ❖ **AB 17d – Increased Payroll Withholding & Estimated Tax Payments (Chapter 15):** Effective November 1, tax withholding tables will be adjusted upward by 10% to compensate for taxpayers who significantly underwithhold. Also, for stock options and bonus payments that constitute wages, the rate of withholding will be increased from 9.3% to 10.23%. Finally, for “supplemental wages” paid on or after November 1, the withholding rate shall increase from 6% to 6.6%. “Supplemental wages” includes such items as bonus payments, overtime payments, commissions, sales awards, back pay, and reimbursements for nondeductible moving expenses. AB 17d also accelerates estimated tax payments. The bill does not increase taxes; instead, it increases withholding and estimated tax payment liability so that more money is collected by the state earlier in the year.
- ❖ **AB 18d – Backup Withholding & Use Tax (Chapter 16):** AB 18d adopts, with modifications, the federal law on backup withholding. Payors must withhold, on reportable payments made on or after January 1, 2010, 7% when such payments are subject to federal backup withholding. AB 18d modifies the federal definition of what constitutes a reportable payment. In addition, if the FTB demands the information, the payor shall provide not only the name and address of the recipient of the income, but also the social security or tax ID number. AB 18d also amends the Revenue and Taxation Code to facilitate the collection of the use tax.

#### LABOR & EMPLOYMENT

- ❖ **AB 793 - Employment: Discrimination:** AB 793 is intended to reject, for purposes of California law, the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.* The bill has been sent to the governor. Under this bill, the statute of limitations for unlawful employment practice and discrimination claims relating to compensation would accrue when a compensation decision or other practice is adopted, an individual becomes subject to a compensation decision or other practice, or an individual is affected by the application of a compensation decision or other practice, including each time when wages, benefits, or other compensation is paid, resulting in whole or in part from the compensation decision or other practice. The bill also defines when liability accrues if an administrative complaint is filed.
- ❖ **AB 943 - Employment: Credit Reports:** This bill has passed both houses; the Assembly has not yet concurred in the Senate's amendments. AB 943 would prohibit an employer, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes unless the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, or confidential information; and (2) the position of the person for which the person is sought is a position in the state Department of Justice, a managerial position, a position in a city, county, or both city and county, that of a sworn peace officer or other law enforcement position, or a position for which the information contained in the report is required to be disclosed by law or to be obtained by the employer.
- ❖ **AB 1186 - Employee Parking:** Existing law requires, in any air basin designated as nonattainment for certain air quality standards, an employer of 50 persons or more that provides a parking subsidy to employees, to also offer a parking cash-out program. AB 1186 would require a lessor that enters into or renews a lease with an employer subject to these requirements, on or after January 1, 2011, to list the amount of parking costs as a separate line item in the lease or provide a list of parking costs to the lessee within 30 days after the lease is entered into or renewed. Upon the request of an employee, an employer shall give to that employee the parking cost information received from the lessor. The bill has passed both houses, but the Assembly must decide if it will concur in the Senate's amendments.
- ❖ **SB 242 - Civil Rights: Language Restrictions:** This bill has been sent to the governor. SB 242 would make it a violation of the Unruh Civil Rights Act to adopt or enforce a policy that requires, limits, or prohibits the use of any

language in or with a business establishment, unless the policy is justified by a business necessity, and notification has been provided of the circumstances and the time when the language restriction or requirement is to be observed and of the consequences for its violation. The bill would define business necessity to require, among other things, that the language restriction or requirement is necessary for the safe and efficient operation of the business and that an equally effective, but less discriminatory, alternative practice does not exist. The bill would provide for an award of damages, and attorney's fees as may be determined by the court, for a violation of its provisions.

- ❖ **AB 141 - Employment: Working Hours:** This bill stalled in the Assembly. AB 141 would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without any obligation to pay overtime compensation.
- ❖ **SB 187 - Employment: Working Hours:** SB 187, which failed passage before the Senate Labor and Industrial Relations Committee, would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without any obligation to pay overtime compensation. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.
- ❖ **AB 1421 - Employment: Work Hours:** AB 1421, which did not make it out of the Assembly, would provide that time spent in transit on a facility-provided conveyance from a remote employee parking location to and from the place at which an employee's presence is required by the employer shall be considered to be part of a workday if the time spent in transit one-way exceeds 12 minutes, the employee is wearing a uniform or insignia while in transit required by the employer, and the employee is employed at an amusement park, sports venue, or entertainment venue, or by a private service contractor at an airport, as these places of employment are defined by the North American Industry Classification System or its predecessor.
- ❖ **SB 287 & SB 380- Meal Periods:** Neither bill made it out of the Senate. Both bills would have modified the rules on meal periods. The modifications would have included revising the statutory requirements for the provision of meal periods to specify that the requirements apply only to employees subject to the meal period provisions of an order of the IWC. In addition, the statutory requirements for providing the meal periods would be revised to specify that a meal period based on working more than 5 hours in a workday is required to be provided before the employee completes 6 hours of work, unless the existing waiver provision is invoked. The waiver provision for the 2nd meal period would be changed to provide an exception for different provisions within IWC wage orders in effect as of January 1, 2009, and to permit the employer and employee to agree to waive either the first or the 2nd meal period if the employee otherwise is entitled to 2 meal periods. The bill also would specify conditions under which on-duty meal periods are permitted rather than meal periods in which the employee is relieved of all duty. The meal period provisions of a valid collective bargaining agreement would be required to be implemented for covered employees rather than the statutory requirements.
- ❖ **SB 807 - Employment: Meal and Rest Periods:** SB 807 also never made it out of the Senate. The bill would provide that the payment to the employee for failure to provide a mandated meal or rest period is a statutory penalty and does not constitute additional wages to the employee. The bill also would clarify that an employer provides a meal or rest period by making one available to the employee without interfering with its use. Finally, a meal period may commence at any time before the start of the 6th hour of work.
- ❖ **AB 227 - Labor Standards: Consultation Unit:** This bill would establish the Labor Standards Consultation Unit for the purpose of providing consulting services—for a fee—to an employer or employee. The service would provide advice and recommendations on compliance with labor standards. If a violation is found as a result of the consultation, the division cannot issue a citation if the employer remedies the violation within 30 days. This bill also stalled in the Assembly.
- ❖ **AB 842 – Employment: Layoffs:** This bill never made it out of the Assembly. AB 842 would increase the layoff notice period employers must give from 60 to 90 days. This bill would require employers, when notice is given, to provide employees with information regarding benefits and services available to them once the notice of layoff is given. The bill would also require employers that give notice of a mass layoff, relocation, or termination to provide sufficient meeting space for the provision of “rapid response activity.” The Labor and Workforce Development Agency would also be required to maintain a guide of benefits and services for employees and a second guide for employers.

- ❖ **AB 1001 - Employment: Familial Status Protection:** This bill also stalled in the Assembly. AB 1001 would include “familial status” as an additional basis upon which the right to seek, obtain, and hold employment cannot be denied under the California Fair Employment and Housing Act. The bill would, for employment purposes, define “familial status” as having or providing care for a child, domestic partner, grandchild, grandparent, parent, parent-in-law, sibling, or spouse.
- ❖ **AB 1560 - Professional Employer Organizations:** This bill would prohibit a person or entity from providing, advertising, or otherwise holding itself out as providing professional employer services in the state, unless that person or entity is registered with the Employment Development Department. AB 1560 stalled in the Assembly.

## LEAVES OF ABSENCE

- ❖ **AB 485 - Civil Air Patrol: California Wing: Employment Leave:** AB 485 has been sent to the governor. This bill would require employers employing more than 15 employees to provide not less than 15 days per year of leave to employees who have been employed for at least 90 days immediately preceding the commencement of leave, who are volunteer members of the California Wing of the Civil Air Patrol, and who have been duly directed and authorized by a political entity that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission of the California Wing of the Civil Air Patrol. The employee would be required to give the employer as much notice as possible. AB 485 would also require an employer, upon expiration of the leave, to restore the employee to the 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 exercise of the leave rights by the employee. The bill would provide that an employer is not required to grant Civil Air Patrol leave to Civil Air Patrol employees who are required to respond as first responders or disaster service workers for a local, state, or federal agency to the same or a simultaneous emergency operational mission. Violations could be enforced by a civil action by the employee.
- ❖ **AB 849 - Family and Medical Leave:** This bill stalled in the Assembly. AB 849 would increase the circumstances under which an employee is entitled to CFRA leave by (1) eliminating the age and dependency elements from the definition of “child,” thereby permitting an employee to take protected leave to care for his or her independent adult child suffering from a serious health condition; (2) expanding the definition of “parent” to include an employee’s parent-in-law; and (3) permitting an employee to also take leave to care for a seriously ill grandparent, sibling, grandchild, or domestic partner.
- ❖ **AB 1000 - Employment: Paid Sick Days:** AB 1000 stalled in the Assembly. Following the San Francisco model, it would have required paid sick leave. In summary, an employee who works in California for 7 or more days in a calendar year would be entitled to paid sick days, which would accrue at a rate of no less than one hour for every 30 hours worked. Accrued time could be used beginning on the 90th calendar day of employment. Employers would have to provide paid sick days for the diagnosis, care, or treatment of health conditions of the employee or an employee’s family member, or for leave related to domestic violence or sexual assault. An employer would be prohibited from discriminating or retaliating against an employee who requests paid sick days. The bill contains posting, notice, and recordkeeping requirements. The Labor Commissioner would administer and enforce the law. Fines could be imposed for violations, and a person who felt his or her rights had been violated could bring an action to recover penalties. Other terms are not summarized here.

## WORKERS’ COMPENSATION

- ❖ **AB 361 – Workers’ Compensation:** This bill has passed both houses; the Assembly must decide if it will concur in the Senate’s amendments. AB 361 provides that, regardless of whether an employer has established a medical provider network or entered into a contract with a health care organization, an employer that authorizes medical treatment shall not rescind or modify that authorization for the portion of the medical treatment that has already been provided for any reason, including, but not limited to, the employer’s subsequent determination that the physician who treated the employee was not eligible to treat that injured employee.

## PUBLIC CONTRACTS

- ❖ **AB 26 - Public Contracts: Bid Preferences: Employee Health Care:** This bill stalled in the Assembly. Under AB 26, a state agency awarding a public works contract must provide a 2% bid preference to a bidder whose employee health care expenditures, and those of its subcontractors, are at least 6.5% of the aggregate social security wages paid to its employees

in California. A bidder and its subcontractors would be required to submit statements certifying that they qualify for the bid preference, and that the bidder and contractors will continue to make required employee health care expenditures. Civil penalties would be imposed for violations. AB 26 would become operative on January 1, 2011.

## DOMESTIC PARTNERS

- ❖ **SB 54 - Family Law: Out-of-State Same-Sex Marriages:** This bill has passed both houses; the Senate must decide if it will concur in the Assembly's amendments. It is intended to address the presently uncertain question of how California should treat same-sex marriages entered outside of this state. SB 54 would provide that, notwithstanding any other provision of law, a marriage between 2 persons of the same sex contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state if the marriage was contracted prior to November 5, 2008. SB 54 would also specify that, notwithstanding any other provision of law, 2 persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses with the sole exception of the designation of "marriage."

## INSURANCE & HEALTH BENEFITS

- ❖ **AB 119 - Health Care Coverage: Pricing:** This bill has been sent to the governor. Existing law prohibits health care service plans from charging premium, price, or charge differentials because of sex, but makes an exception for differentials based on specified statistical and actuarial data. This bill would eliminate that exception. Similar rules would apply to life and disability insurers. The terms of the bill would take effect January 1, 2011.
- ❖ **AB 328 - Electronic Transactions: Exceptions:** AB 328 has been sent to the governor. There are several parts of this bill, all intended to allow certain transactions to be conducted electronically. First, existing law generally permits parties to a contract to conduct transactions by electronic means, but certain transactions are exempt from the rules. AB 328 would remove the exemptions that apply to insurance transactions (there are limits in the case of automobile insurance). Second, existing law generally requires, unless otherwise provided, that any required notice related to insurance transactions be made by mail. AB 328 would authorize any required notice related to certain types of insurance on risks or operations in California to be made electronically with the consent of the parties. AB 328 would also require an insurer to maintain a system for electronically confirming a policyholder's decision to opt in to an agreement to conduct transactions electronically and to electronically opt out of the agreement to conduct business electronically. This bill would require the insurer to maintain the electronic records for the same amount of time the insurer would be required to maintain those records if the records were in written form. Finally, this bill would generally allow an insurer, with the consent of the insured, to pay covered claims by an electronic funds transfer. The insurer could not require payment by electronic funds transfer.
- ❖ **AB 745 - Self-Funded Dental Benefit Plans:** This bill has been sent to the governor. It requires an administrator providing administrative services for a self-funded dental benefit plan to include certain language in explanation of benefits documents and in forms sent to claimants in response to claims for benefits. Due to ERISA preemption, the legislature cannot directly regulate self-funded plans. They are attempting this change by amending the laws relating to the registration of third party administrators. The specific language to be used is included in the bill; it explains that the plan is subject to ERISA.
- ❖ **SB 296 - Mental Health Services:** SB 296 has been sent to the governor. This bill would, on and after July 1, 2011, require every health care service plan, including a specialized health care service plan, and health insurer that provides professional mental health services to issue an identification card to each enrollee in order to assist the enrollee with accessing health benefits coverage information and other information. The bill would require the identification card to be issued upon enrollment or commencement of coverage or upon any change in the enrollee's coverage that impacts the data content or format of the card. The bill would also require plans and insurers to provide, on or before January 1, 2012, certain information on their Internet Web sites, to be updated as specified. Other details of the bill are omitted here.
- ❖ **AB 29 - Health Care Coverage: Dependents:** AB, which stalled in the Assembly, would provide that the limiting age for dependent children covered by health care service plan contracts and group health insurance policies would not be less

than 27 years of age. In addition, however, no employer would be required to pay the cost of coverage for dependents who are at least 23 years of age, but less than 27 years of age. There is one exception: the change shall not be effective for employment contracts subject to collective bargaining that are effective prior to January 1, 2010, but it will apply to contracts issued after that date.

- ❖ **AB 1218 - Health Care Coverage: Rate Approval:** AB 1218 failed passage before the Assembly Health Committee. AB 1218, would, subject to specified exceptions, require approval by the DMHC or the DOI of an increase in the amount of the premium, copayment, coinsurance obligation, deductible, and other charges under a health care service plan or health insurance policy. Plans and insurers would be required to submit an application for a rate increase that would be effective on or after January 1, 2011, and would require review of the application in accordance with regulations that would be adopted no later than January 1, 2011. The bill would subject a rate increase that became effective January 1, 2009, to December 31, 2010, inclusive, to review by the appropriate department. In addition, the public would receive notice of a rate application. Other terms are not summarized here.

**SB 238 - Prescription Drugs:** SB 238 stalled in the Senate. This bill would require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2010, to provide coverage for a 90-day supply of medication when it is indicated on a prescription by the prescribing provider. The bill would also amend the Confidentiality of Medical Information Act with respect to written communications pharmacies can send to patients.

- ❖ **SB 316 - Health Care Coverage: Benefits:** SB 316 remains in the Senate. The issue covered by this bill is one we have been seeing in health reform measures. SB 316 would require full service health care service plans and health insurers to expend on health care benefits no less than 85% of the aggregate dues, fees, premiums, and other periodic payments they receive with respect to plan contracts or policies issued, amended, or renewed on or after January 1, 2013. Plans and insurers could assess compliance with this requirement by averaging their total costs across all plan contracts or insurance policies and their affiliated plans and insurers in California, except as specified. Annual affirmation of compliance would have to be provided.
- ❖ **SB 727 - Cal-COBRA:** This bill stalled in the Senate; it would greatly expand state continuation coverage. SB 727 would expand Cal-COBRA to require that health care service plans and health insurers offer continuation coverage to individuals covered under a group benefit plan if the employer terminates the plan, does not provide a successor group benefit plan, and the covered employee is an active employee at the time the employer terminates the plan. The bill would require the offered coverage to be for not less than 18 months from the termination date, except as specified, and to be offered under the same terms, conditions, and rates as the former group plan, but subject to the rules governing Cal-COBRA coverage, to the extent relevant, applicable, and not in conflict with the bill's provisions.
- ❖ **SB 796 - Health Care Coverage: Continuation Coverage: HIPAA:** SB 796 also stalled in the Senate. This bill would delete the requirement in existing law that a person must elect and exhaust COBRA or Cal-COBRA coverage in order to qualify for access to individual health care coverage as a federally eligible defined individual under HIPAA.

#### **MANDATED HEALTH INSURANCE/HMO BENEFITS**

- ❖ **AB 56 - Health Care Coverage: Mammographies:** This bill passed both houses; the Assembly has to decide if it will concur in the Senate's amendments. AB 56 would expand existing law, effective July 1, 2010, to provide that individual and group health care service plans and insurance policies shall be deemed to cover mammographies for screening or diagnostic purposes upon referral of a participating nurse practitioner, participating certified nurse-midwife, or participating physician (the frequency of the tests is not limited by the age of the woman). Furthermore, AB 56 would require HMOs and health insurers to provide an enrollee with information regarding recommended timelines for an individual to undergo tests for the screening or diagnosis of breast cancer. The bill defines how the notice must be provided.
- ❖ **AB 98 – Maternity Services:** This bill is in the Senate second reading file. Under AB 98, every individual or group policy of health insurance (the bill does not apply to HMOs) that is issued, amended, renewed, or delivered on or after January 1, 2010, shall provide coverage for maternity services. “For the purposes of this section, ‘maternity services’ include prenatal care, ambulatory care maternity services, involuntary complications of pregnancy, neonatal care, and inpatient hospital maternity care, including labor and delivery and postpartum care.”

- ❖ **AB 244 - Health Care Coverage: Mental Health Services:** AB 244 has passed both houses; the Assembly must decide if it will concur in the Senate's amendments. This bill would expand existing mandatory mental health coverage requirements, and would be effective for health care service plan contracts and health insurance policies issued, amended, or renewed on or after January 1, 2010. The bill includes an expanded definition of the conditions that would have to be included within a plan's mental health parity requirements; specifically, the definition of covered mental illnesses would include all those defined as a mental disorder described in the Diagnostic and Statistical Manual IV. The bill would not apply to plans, contracts, or policies with PERS.
  
- ❖ **AB 513 - Health Care Coverage: Breast-Feeding:** Both houses approved this bill; the Assembly must decide if it will concur in the Senate's amendments. This bill would require specified health care service plans and health insurers to provide coverage for lactation consultation with an international board certified lactation consultant (IBCLC) and for the provision of a personal electric or personal manual breast pump or coverage for the rental of a hospital grade electric breast pump. The bill applies to individual and group policies and contracts and will take effect January 1, 2010.
  
- ❖ **SB 158 - Health Care Coverage: Human Papillomavirus Vaccination:** Both houses approved this bill; the Assembly must decide if it will concur in the Senate's amendments. SB 158 would require health care service plan contracts and health insurance policies that include coverage for the treatment or surgery of cervical cancer to also provide coverage for a human papillomavirus vaccination. The bill applies to individual and group contracts and policies issued, amended, or renewed on or after January 1, 2010.
  
- ❖ **SB 161 - Health Care Coverage: Cancer Treatment:** This bill is in the Assembly third reading file. SB 161 provides that plans and policies that provide coverage for cancer chemotherapy treatment must also provide coverage for a prescribed, orally administered cancer medication on a basis no less favorable than intravenously administered or injected cancer medications covered under the contracts or policies. Plans and insurers would be required to review the percentage cost share for oral cancer medications and intravenous or injected cancer medications and to apply the lower of the 2 as the cost-sharing provision for oral cancer medications. The bill does not apply to Cal-PERS. SB 161 applies to policies and contracts issued, amended, or renewed on or after January 1, 2010.
  
- ❖ **SB 630 - Health Care Coverage: Reconstructive Surgery:** This bill is in the Senate third reading file. Existing law requires health care service plan contracts and health insurance policies to cover reconstructive surgery. SB 630 would define reconstructive surgery to include medically necessary dental or orthodontic services that are an integral part of reconstructive surgery for cleft palate procedures.
  
- ❖ **AB 163 - Amino Acid-Based Elemental Formulas:** This bill stalled in the Assembly. AB 163 would require health care service plan contracts and health insurance policies to provide coverage for the use of amino acid-based elemental formulas, regardless of the delivery method, for the diagnosis and treatment of eosinophilic gastrointestinal disorders, as defined, when the prescribing physician has issued a written order stating that the amino acid-based elemental formula is medically necessary. The mandate in this bill would be effective January 1, 2010.
  
- ❖ **AB 214 - Health Care Coverage: Durable Medical Equipment:** AB 214 also stalled in the Assembly. This bill would require a health care service plan and a health insurer to provide coverage for durable medical equipment. AB 214 applies to group and individual contracts and policies effective January 1, 2010. "Durable medical equipment" includes such items as manual and motorized wheelchairs, scooters, oxygen equipment, crutches, walkers, electric beds, and mechanical patient lifts.
  
- ❖ **SB 529 - Health Care Coverage: FDA Approved Treatment:** SB 529 stalled in the Senate. This bill would require a health care service plan contract or a health insurance policy that provides coverage of a health condition to also provide coverage for any federal Food and Drug Administration approved treatment of that condition.

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This is only a brief synopsis of certain California legislation. The terms of the bills summarized can be detailed and complex, and this summary does not purport to cover every aspect of each bill. This summary does not constitute legal advice. Employers should consult their own legal counsel concerning whether and how these laws should be implemented, and whether there are other labor and employee benefit legal standards that need to be put into place or updated.